Delano, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAM ANDREWS' SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 81-CE-127-D 81-CE-128-D 81-CE-135-D 81-CE-136-D 81-CE-137-D 81-CE-138-D 81-CE-140-D 81-CE-159-D 81-CE-160-D

8 ALRB No. 69

DECISION AND ORDER

On April 26, 1982, Administrative Law Officer (ALO) Arie Schoorl issued the attached Decision in this proceeding. Thereafter, Respondent, General Counsel, and the Charging Party each timely filed exceptions, a supporting brief, and a reply brief.

Pursuant to provisions of Labor Code section 1146, the Agricultural Labor Relations Board (ALRB or Board) has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1/] and conclusions of the ALO and to adopt his recommended Order as modified herein.

[1/] The ALO recommended dismissal of the allegations that, foreman Diego Mireles threatened Marcelino Vasquez with a pistol and that an agent of Respondent, inside the labor camp, threatened United Farm Workers of America, AFL-CIO (UFW) representative Maurilo Urias with a rifle. The ALO found that, in both instances, the General Counsel failed to establish that the threatening persons were authorized agents of Respondent. While we agree with the ALO's conclusions, we do not adopt his application of common law rules of agency. (See Vista Verde Farms (Mar. 20< 1981) 29 Cal.3d 307 [172 Cal.Rptr. 720].)

The ALO found that Respondent's failure to rehire Francisco Larios as an irrigator during the period in which Larios made repeated applications and inquiries about employment was discriminatory. Respondent argues that General Counsel did not establish that jobs were available during that period and that Larios[1] case must fail in the absence of such proof. We find no merit in that exception. As we stated in Golden Valley Farming (Feb. 4, 1980) 6 ALRB No. 8, it is not always necessary to show a contemporaneous job vacancy to prove a discriminatory refusal to rehire. (Shawnee Industries, Inc. (1963) 140 NLRB 1451 [52 LRRM 1270], reversed on other grounds, 333 F.2d 221 [56 LRRM 2567] (10th Cir. 1964).) We affirm the ALO's conclusion that Respondent violated section 1153 (c) and (a) of the Act by discriminatorily refusing to rehire Larios as an irrigator.[2/] The ALO properly referred the determination of the date when the backpay period begins to the compliance stage. (Kawano, Inc. (Dec. 26, 1978) 4 ALRB No. 104; Golden Valley Farming, supra, 6 ALRB No. 8; Piasecki Aircraft Corp. v. NLRB 280 F.2d 575 [46 LRRM 2468] (3rd Cir. 1960).)

The ALO found that a high-speed car chase of UFW picketers by Respondent's agents on July 10, 1981, was intimidating and in violation of section 1153 (a) and (c) of the Agricultural Labor Relations Act (Act). As the conduct interfered with and was

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[2/] We do not rely on the ALO's use of Respondent's conduct in response to our Order in Sam Andrews' Sons (Aug. 15, 1980) 6 ALRB No. 44 to find discrimination. The ALO found that the manner in which Respondent treated Larios in respect to that Board Order showed a discriminatory design. This case is not the proper forum to decide whether Respondent complied with our previous Order.

coercive of employee rights guaranteed by Labor Code section 1152, we conclude that it was violative of section 1153 (a) only.

Evidence submitted in relation to the strike-access allegations established that Fred Andrews and four guards forced UFW agents to leave the labor camp on July 22, 1981. It is an unfair labor practice for an employer to prevent union organizers from communicating with employees in a labor camp. (Vista Verde Farms (Dec. 14, 1977) 3 ALRB No. 91; The Garin Co. (Jan. 23, 1979) 5 ALRB No. 4.)" As there was no allegation in the consolidated complaint that that incident was an independent unfair labor practice, and as it was not fully litigated at the hearing, we find no violation based on that conduct. However, the conduct of Fred Andrews at the labor camp supports our finding that there was no adequate alternative means available for the UFW to communicate wi[4] the replacement workers. We affirm the ALO's findings and conclusions regarding Respondent's denials, on August 6 and 7, of strike access to the UFW.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board hereby orders that Respondent Sam Andrews' Sons, its officers, agents, successors, and assigns shall:

1, Cease and desist from:

(a) Failing and/or refusing to hire or rehire, or otherwise discriminating against, any agricultural employee in regard to hire' or tenure of employment or any term or condition of employment because he or she has engaged in any union activity or

other protected activity or has filed charges or given testimony in any Board proceedings.

(b) Denying reasonable access to Respondent's premises to any representative of the United Farm Workers of America, AFL-CIO (UFW) or other union agent for the purpose of communicating with nonstriking employees while there is a strike in progress at Respondent's premises.

(c) Following motor vehicles carrying UFW representatives and/or strikers or otherwise interfering with, coercing or restraining such persons, to prevent them from engaging in lawful union activity or other protected concerted activity.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Offer Francisco Larios employment as an irrigator and reimburse him for all losses of pay and other economic losses he has suffered as a result of Respondent's discriminatory refusal to rehire him after he made proper application, the award to be computed in accordance with established Board precedents, plus interest thereon, computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (Aug. 18, 1982) 8 ALRB No. 55.

(b) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay period and the amount of backpay and interest due under the terms of this Order.

(c) During any period when there is a strike in progress at Respondent's premises, permit access to its premises by representatives of the striking union for the purpose of communicating with nonstriking employees. Said access-takers may enter the Respondent's property for a period not to exceed one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an established lunch break, the access period shall encompass such lunch break. If there is no established lunch break, the access period shall encompass the time when the employees to be contacted are actually taking their lunch break, whenever that occurs during the day. Access shall be limited to one UFW representative or union agent for every fifteen workers on the property. Said access shall continue until a voluntary agreement on strike access is reached by the union and the employer or until the union ceases to be the collective-bargaining representative of Respondent's employees, whichever occurs first.

(d) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into

all appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(e) Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days in conspicuous places on its property, the period (s) and place (s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(f) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time during the period from January 1, 1981, until October 31, 1981.

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place (s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice and/or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

h) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms and continue to report

periodically thereafter, at the Regional Director's request, until full compliance is achieved.

Dated: September 28, 1982

HERBERT A. PERRY, Acting Chairman,

ALFRED H. SONG, Member

JEROME R. WALDIE, Member

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed by the UFW in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law during the 1981 strike by refusing to allow UFW organizers and other union agents to take access to our property during a strike in order to speak to non-striking employees; by interfering with lawful conversations between UFW representatives and nonstriking employees; by intimidating UFW representatives and strikers by following their vehicles and attempting to force them off the road; and by refusing to hire former employee Francisco Larios because he had engaged in union activities and had sought help from the Board. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is a law that gives you and all farm workers these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer to obtain a contract covering your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help or protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT refuse to allow agents of your certified collective-bargaining representative to enter our property at reasonable times during a strike at our property so that they can talk to nonstriking employees who are on their lunch break.

WE WILL NOT intimidate UFW representatives and/or strikers by following their vehicles and trying to force them off the road.

WE WILL NOT interfere in lawful conversations between UFW representative; and nonstriking employees while on or off our premises.

WE WILL hire Francisco Larios as an irrigator and reimburse him for all losses of pay and other economic losses he has suffered as a result of our refusal to rehire him, plus interest.

Dated: SAM ANDREWS' SONS

By:

(Representative) (Title)

If you have any questions about your rights as farm workers or this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California, 93215. The telephone number is (805) 725-5770. This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

Sam Andrews' Sons
(UFW)

8 ALRB No. 69
Case Nos. 81-CE-127-D
81-CE-128-D
81-CE-135-D
81-CE-136-D
81-CE-137-D
81-CE-138-D
81-CE-140-D
81-CE-159-D
81-CE-160-D

ALO DECISION

The Complaint alleged 12 separate violations of the Act, including the discriminatory discharge of 8 irrigators, a refusal to rehire, discriminatory job assignments, harassment, threats, interference with employee section 1152 rights and a denial of strike access. Eight irrigators refused to ride to work in the back of company pickups, as had been past practice. When they refused to do so, the Employer asked them to either go to work or leave his property. The ALO found that their refusal to ride in the trucks was protected activity, but dismissed the allegation of discriminatory discharge as there was no proof of discharge, suspension, or discipline. The ALO found that Respondent discriminatorily refused to rehire Francisco Larios as an irrigator. Based partly on the fact that Respondent did not clearly offer to re-hire Larios as required by a prior Board Order, the ALO found that Respondent intended to discourage his reapplications for work. The ALC dismissed an allegation that Francisco Luevano was given discriminatory job assignments on the basis that the General Counsel failed to prove discrimination.

There were various allegations of harassment of picketers by Respondent' s conduct of high-speed car chases and threats with firearms. The ALO dismissed the allegations concerning threats with firearms on the basis that agency was not proven. He found some automobile chases to be unlawful harassment in violation of section 1153 (a) and (c) and dismissed other similar allegations on the basis of insufficient proof or an adequate defense of trespass.

The ALO found that Respondent unlawfully denied strike access on August. 6 and 7. He found that there was no adequate alternative means for the strikers to communicate to the nonstrikers on the picket line or elsewhere and there was insufficient proof of violence on the part of the UFW to justify Respondent's refusal of strike access.

BOARD DECISION

The Board adopted the ALO's recommendations with minor modifications. Adopting the recommendations to dismiss the allegations of threats with firearms, the Board disavowed the ALO's application of common law rules of agency. The Board corrected the ALO's finding that the car chases violated 1153 (c) and (a), by adopting the 1153 (a) violation only. The Board noted that the proper forum to decide whether or not a respondent properly offered reinstatement pursuant to a prior Board Order is in a compliance hearing.

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STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of: SAM ANDREWS' SONS, Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case Nos. 81-CE-127-D 81-CE-128-D 81-CE-135-D 81-CE-136-D 81-CE-137-D 81-CE-138-D 81-CE-140-D 81-CE-159-D 81-CE-160-D

Raquel Leon, Esq.
for the General Counsel

Merrill F. Storms, Jr., Esq.
and Thomas B. McAfee, Esq. of
Gray, Cary, Ames and Frye
for Respondent

Ben Maddox, Representative
for the Charging Party

DECISION OF THE ADMINISTRATIVE LAW OFFICER

ARIE SCHOORL, Administrative Law Officer: This case was heard before me on August 11, 12, 14, 18, 19, 21, 24, 25, 26 and 27, September 21, 22, 23, 24, 25, 28, 29 and 30 and October 7, 8, 9, 14 and 15, 1981 in Delano, Bakersfield and Los Angeles. The original complaint which issued on July 17, 1981 based on 7 charges filed by the United Farm Workers of America, AFL-CIO (hereinafter referred to as the UFW) the Charging Party, and duly served on Sam Andrews' Sons, (hereinafter referred to as Respondent) alleged that Respondent committed numerous violations of the Agricultural Labor Relations Act (hereinafter referred to as the ALRA or the Act). During the hearing, General Counsel amended the complaint by alleging seven additional violations of the Act, five based on the original charges and two based on subsequent charges Case Nos. 81-CE-159-D and 81-CE-160-D.

At the hearing, General Counsel moved to amend the complaint by deleting the allegations based on a charges in Case Nos. 31-CE-135-D and 81-CE-138-D and an additional allegation that an agent of Respondent aimed a rifle at UFW representative Maurilio Urias at the Santiago Ranch on or about August 5 and I granted said motion.

General Counsel, Respondent and Charging Party appeared at the hearing and General Counsel and Respondent each filed a post-hearing brief.

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the arguments and briefs of the parties, I make the following:

FINDINGS OF FACT

I. Jurisdiction

I find that Respondent is an agricultural employer within the meaning of section 1140.4(c) of the Act and that the UFW, the Charging Party herein, is a labor organization within the meaning of section 1140.4(f) of the Act.

II. The Alleged Unfair Labor Practices

Respondent is alleged in the complaint to have violated section 1153(c), (d) and (a) of the Act in the Spring of 1981 by refusing to rehire employee Francisco Larios because of his union activities and his testimony at a prior ALRB hearing and by discriminatorily changing the terms and conditions of employee Francisco Luevano's employment because of his union activities. The complaint also alleges that Respondent violated section 1153(c) and (a) of the Act in July and August 1981 by suspending employee Leonardo Villavueva and seven other irrigators because they had engaged in protected concerted activities and violated section 1153(a): by the acts of its supervisors and guards in pursuing striking employees in motor vehicles while said employees and UFW representatives were driving on a public road because of the employees' activities on the part of the UFW; by the acts of its supervisors and guards forcing striking employees' automobiles off the road, and blocking said vehicles, because of the employees' activities on the part of the UFW; by the acts of its agents in driving a vehicle off the paved road toward picketing employees because they were engaged in protected concerted activities and supported the UFW; by the acts of its supervisors, agents and guards

in displaying weapons in a threatening manner at striking employees because of their protected concerted activities and their support of the UFW; by the acts of its foreman, Diego Mireles, in threatening a striking employee, Marcelino Vazquez, by pointing a gun at him and challenging him to a gun duel because of Vazquez' activities on behalf of the UFW; and by the act of its agent in aiming a rifle at a UFW representative while he was in the presence of 10 to 15 striking employees because of their support of the UFW. Respondent is further alleged to have violated section 1153(a) of the Act by the conduct of its supervisors in ordering employees to discontinue their conversation with a UFW representative and thereby interfering with, restraining, and coercing employees in the exercise of their section 1152 rights, and by refusing, through its attorney Merrill F. Storms, Jr. and its guards, to permit UFW representatives to take access to Respondent's agricultural properties on August 6 and 7, 1981 for the purpose of making post-certification contact with Respondent's employees.

III. Background Information

Respondent is a general partnership with agricultural operations in Kern County and the Imperial Valley. The partnership is owned by three brothers, Robert S. Andrews, Fred C. Andrews and Donald S. Andrews. Respondent has two Kern County ranches which are six miles apart: the Lakeview Ranch, with numerous structures (including the labor camp) located at the intersection of Copus and Old River Roads; and the Santiago Ranch, with numerous structures, located on Copus Road approximately six miles west of Old River Road. The Santiago Ranch structures include an office, a packing

house and an equipment yard.

Respondent grows cotton, cantaloups, watermelon, carrots, lettuce, wheat, onions, garlic and tomatoes on these two ranches. The largest crop, which exceeds by far the others, is cotton.

Don Andrews, is in charge of labor relations and collective bargaining negotiations. Fred Andrews is in charge of the farm operations. Robert Andrews is in charge of sales. Jerry Rava is the general manager. Bob Garcia, handles many of the day-to-day labor relations matters and personnel problems. Frank Castro and John Perez are the irrigation foremen, Frank and Jessie Terrazas are the tractor foremen and there are numerous harvest foremen, weed-and-thin foremen, and a shop foreman.

The UFW was certified to represent Repsondent's employees in August 1978 and the negotiation sessions began in January 1979 and have continued periodically since then until October 1981, the time of the hearing. The negotiations have been marked by several strikes, walk-outs, protests and the filing of unfair labor practice charges by both Respondent and the UFW and on July 9, 1981, the UFW commenced its strike against Respondent which was still in effect at the time the hearing was concluded.

IV. Alleged Disciminatory Discharge of Eight Irrigators

A. Facts

Respondents had utilized pickup trucks and vans to transport its irrigators to their work sites for a number of years. The irrigators had made periodic complaints about both methods of transportation, contending that the vans were too hot in the summer because of the lack of ventilation and that the pickup tracks were

unsafe since most of the irrigators had to sit in cramped positions in the back with a variety of equipment, e.g. valves, shovels, water jugs, and pipes, etc. For the few months preceding July 1981 Respondent had been using exclusively pickup trucks for such transportation.

On the morning of July 8, 1981, the two irrigation foremen, Camerino Esparza and Francisco Reyes, arrived at the Lakeview pickup point at the usual time, between 6:00 to 6:30 a.m. Eight irrigators[1/], with employees Leonardo Villanueva and Javier Ramirez, acting as their spokesmen, informed the two foremen and irrigation supervisor Frank Castro that they would no longer ride in the back of the pickups and demanded safe transportation to their work sites. They added that they were willing to ride two-by-two in the cabs of the respective pickups driven by Esparza and Reyes, or in any other safe means of transportation. Castro rejected their demand. The spokesmen responded that the eight irrigators would wait at the pickup point until Respondent supplied them with safe transportation, and that they were of the opinion that the Respondent should pay them for the time spent in so waiting. Castro answered, "No way will you be paid", and added sarcastically, "What do you want, an air-conditioned bus?". Villanueva replied that the irrigators only wanted something adequate and commented that Respondent's refusal (to provide safe transportation) was an unfair labor practice. Castro and the two foremen, along with the rest of

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1. Leonardo Villanueva, Javier Ranirez, Jose Alfredo Navarro, Esteban Villanueva, Jose Castaneda, Miguel Alvarez, Marcelino Vazquez, and Porfio Vazquez.

the irrigators, drove away, leaving the eight irrigators at the pickup point. After an hour and a half of waiting in vain for transportation, the eight irrigators drove to Lamont in three automobiles, owned respectively by Javier Ramirez, Leonardo Villanueva and Miguel Alvarez, and filed an unfair labor practice charge alleging that Respondent had retaliated against them for their protected concerted activity by unilaterally changing their method of transportation to a more hazardous and dangerous condition. At about noon of the same day Villanueva, Ramirez, Castaneda and Alvarez returned to the pickup point and repeated their request to Frank Castro for adequate transportation. The latter replied that he did not know whether it would be provided and that he would see about it on the following day.

The next morning the eight irrigators arrived at the pickup point at approximately 6:30 but neither Camerino Esparza or Francisco Reyes came to provide them with transportation of any kind, the irrigators noticed that there were some pickets with UFW; flags some 150 yards away at the intersection of Copus and Old River Roads. One of the reasons the employees were on_strike and picketing was to protest the Respondent's failure and refusal the day before to provide the eight irrigators with safe transportation. At approximately 6:40 a.m. Frank Castro arrived at the pickup site and told Leonardo Villanueva, Javier Rarairez, and Jose Alfredo Navarro, the three irrigators who were standing at the pickup point that if they were not there to work they should leave Respondent's property, or he would call the police. Ramirez informed Castro he wanted to work but wanted safe transportation. At that moment Bob

Garcia arrived and said that if the irrigators were not going to work they should leave. Thereupon, the three irrigators departed.

B. Analysis and Conclusion

General Counsel alleged that Respondent suspended the eight irrigators because they had engaged in union activities and other protected concerted activities.

It is true the irrigators did engage in a concerted protected activity when, acting as a group, with Leonardo Villanueva and Javier Ramirez as their spokesmen, they protested about the unsafe transportation theretofore provided by Respondent and refused to ride by means of said transportation, i.e. in the bed areas of the foremen's pickup trucks.

This protest and refusal to ride in the bed areas of the pickup trucks clearly fulfills the four elements of a protected concerted activity.[2/] (1) there must be a work-related complaint; (2) the concerted activity must further some group interest; (3) a special remedy or result must be sought through such activity; and (4) the activity must not be unlawful or otherwise improper.

The irrigators[1] protest was certainly work-related, i.e. the means by which. Respondent provided their transportation to the work sites. Their protest and joint refusal to continue unsafe transport clearly furthered their joint interest in safe transportation for at least the eight irrigators and perhaps for the

2. Shelley & Anderson Furniture Mfg. Co. v. NLRB (9th Cir. 1974} 497 F.2d 1200.

other irrigators also. Attaining safe transportation is a specific enough goal to comply with the third requirement. Engaging in a work stoppage to achieve such a goal cannot be classified as an unlawful or improper activity as there was no collective bargaining contract or a no-strike clause in effect. On these facts, I conclude that the irrigators participated in a protected concerted work activity within the meaning of section 1152 of the Act.

Although General Counsel contends that Respondent suspended or discharged the eight irrigators from their employment because of their protected concerted activity, the record herein does not establish that Respondent ever discharged, suspended or laid off the employees. The only logical interpretation of the record evidence is that the eight irrigators were no longer willing to perform their work for Respondent under the current working conditions. When they expressed such unwillingness, Respondent ordered them off its property, not because they had engaged in concerted activity but because, having failed to induce Respondent to provide other means of transportation, they refused to go back to work.

Respondent's position throughout July 8 and the morning of July 9 was that the irrigators' jobs were waiting for then and that Respondent would continue to provide them with transportation by pickup truck to their respective work sites. As the irrigators refused to accept that form of transportation, or to travel to their work sites on their own, Respondent correctly interpreted this action as a refusal to work and therefore, on July 9, through its supervisors Frank Castro and Robert Garcia, ordered them to leave Respondent's premises.

I find that the eight irrigators when given a choice of working along with, and on the same terms as, the other irrigators or leaving the employ of Respondent, elected to abandon their jobs. That was the only reason they stopped working at Respondent's ranch. Respondent did not suspend, layoff or discharge them. An employer is not required to change the working conditions of its employees merely because a concerted request has been made by employees. An employer nay not discharge employees because they made such a request but it does not forfeit the right to terminate them for refusing to work after the concerted request has been denied. General Counsel has failed to prove that Respondent ever discharged the irrigators, and has adduced no evidence to establish that Respondent's reaction was based on the employees' concerted activity rather than on their refusal to work.

Following General Counsel's reasoning to its logical conclusion, the only way an employer would be able to avoid committing an unfair labor practice under these circumstances would be to grant any and all concerted demands of its employees for changes in the terms and conditions of their employment. If that were the law, workers would no longer need unions or collective bargaining agreements. All they would have to do is to refuse to work until an employer met their concerted demands for changes in their working conditions.

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V. Respondent's Alleged Refusal to Rehire Francisco Larios as an Irrigator Because of His Union Activities and Testimony at an ALRB Hearing

Respondent's Alleged Harassment of Francisco Larios by Chasing Him as He Drove Along Copus Road

A. Facts

Francisco Larios had worked at Respondent's ranch from July 1975 to July 3, 1978 as an irrigator. There had been no complaints on the part of Respondent in respect to the quality of his work during this three year period of employment. He testified that he quit on the latter date of his own accord because in Larios' opinion his foreman was putting undue pressure on him because he was one of the leading UFW activists at Respondent's ranch. He failed to file any unfair labor practice charge in this regard with the ALRB. Respondent stipulated that it had knowledge of Larios' union activities and his testifying against Respondent before the Board.

In March 1979 Larios returned to Respondent's employ and worked a day with a weed-and-thin crew and was then laid off. Larios filed a charge with the ALRB alleging that discrimination was the cause of his layoff. After a hearing, the Board found in his favor and issued an order in July 1980 which directed Respondent to rehire him. Respondent appealed from the Board's decision and order.

Soon afterwards Larios filed an application at Respondent's personnel office for employment as an irrigator. Larios testified that the reason he followed that procedure rather than making a job inquiry directly with an irrigation supervisor or foreman was that he believed that he was following the correct method. According to this testimony, his belief was based on Respondent's practice during

the year preceding his quitting in 1978, of job applications being made directly to the previous personnel director Steve Highfelt rather than through the irrigation foremen.

Larios contacted Bob Garcia, Respondent's personnel director four times in the fall and winter of 1980 about his application for irrigation work. The first time, Larios telephoned Garcia, and without providing his name, he informed Garcia that John Perez, an irrigation supervisor, had advised him to speak with Garcia about an irrigation job opening. Garcia responded that there was no current opening but perhaps there would be work for irrigators in November or December. Larios inquired whether he should file an application so when there was an opening Respondent could contact him and Garcia answered in the affirmative.

A week later, Larios telephoned Garcia again, gave his name, noticed a pause on the part of Garcia, and then heard Garcia say that there was no opening at the present time, but there would possibly be one in January or later on.

A month later, Larios, again telephoned Garcia and that time Garcia said perhaps there would he openings in February or March. Around the first of the year, Larios once again telephoned Garcia repeating the same request for work as an irrigator, and received the same answer from Garcia that there was no such work then available.[3/]

During none of these conversations did Garcia ever point out to Larios that the proper procedure to secure employment as an

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3. The only time Larios failed to identify himself in his conversations with Garcia was the first time he contacted him.

irrigator was to directly request work from Respondent's irrigation supervisors rather than filling out an application with its personnel department.

In April, the Court of Appeals affirmed the Board's decision as to Larios[1] discriminatory layoff in 1979 and, in accordance with the Board's order, Respondent sent a letter to Larios offering him full and immediate reinstatement to the weed-and-thin crew. Larios telephoned Garcia and requested an extension of two to three days so he could put things in order at his current employment and attend to some personal matters. Garcia replied that such a delay was acceptable to him but that he had to secure approval from his superiors and Larios should telephone him the next day. (Larios in his testimony could not remember whether the next day was a Thursday or a Friday.) Larios complied but Garcia was not in so he telephoned the following Monday. He explained to Garcia about his phoning when Garcia had not been in. The latter reproached him and said he should have tried telephoning again the same day. Larios replied that he had something else to do and could not stay by the telephone until Garcia returned. Garcia told him to call back later, which Larios did the next afternoon but again Garcia was not in. Larios called the following morning and Garcia informed him that the weed-and-thin crew had been laid off and so there was no current opening for him but in three weeks work would start up again. Larios once again asked for irrigation work but Garcia answered that since there were few irrigators working there were currently no openings.

Later Larios sent a telegram (Respondent's Exhibit 4) to

Garcia with a summary of the steps he (Larios) had taken in seeking reinstatement at Respondent's in April and concluded the telegram with a sentence that Garcia had said he would call Larios in May.

On May 4, Larios telephoned Garcia but the latter was not in. Larios left his telephone number with a secretary, who informed him Respondent would contact him. That same afternoon Frank Castro, one of the irrigation supervisors, responding to an order from Garcia, telephoned Larios and told him to report the next morning to foreman Diego Mireles[1] weed-and-thin crew. Larios inquired about irrigation work and Castro replied that the only work available was with the weed-and-thin crew. Larios said, "If no irrigation, all right," and agreed to come to work the next day. However, Larios failed to report to work the next morning. He testified that the reason for his failure to do so was because he had to report to work at his current job at 4:00 p.m. the afternoon of the telephone call and that he had not been given sufficient time to notify his current employer about quitting. Larios admitted he failed to ask Castro for more time before having to report to work for Respondent. Sometime during the month of June, Larios accompanied David Villarino, UFW field director, to Respondent's ranch where they conversed with John Perez, one of Respondent's irrigation supervisors. Larios mentioned to Perez that Castro had offered bin a job but had not given him sufficient advance notice. Perez answered with only a "Yes". Neither Larios nor Perez mentioned anything about employment for Larios in irrigation work.

On July 8, early in the morning, Larios went to the Lakeview complex and asked Frank Castro whether there was an openinq

for an irrigator. Castro said that he knew of none but suggested that Larios talk to the other irrigation supervisor, John Perez.

Larios drove to the Santiago Ranch and spoke to Fred Andrews about a job opening in irrigation. Andrews answered that there was no work. Larios informed him that he had received a letter from Garcia in which Respondent offered him work. Andrews replied, "What?", with surprise. Larios added that he had a letter of reference from his previous employer and showed it to Andrews. Andrews asked him why he had not continued in that employment. Larios explained that he would work more hours and make more money at Respondent's ranch. Andrews requested Larios to park over to the side and Larios complied. A moment later Andrews approached Larios and told him to wait, that they were coming to talk to him. After five to ten minutes John Perez arrived and conferred with Andrews. Perez then went over to where Larios was parked and asked him what he wanted. Larios responded that he had come to see whether there was any irrigation work. Perez said there was nothing right then and Andrews, who was standing nearby, terminated the conversation by 'saying to Larios, "Well, you can leave now."[4/]

Larios departed and proceeded east on Copus Road. He noticed that Fred Andrews was following closely behind him in his blue Cadillac automobile. Andrews continued to follow, 20 to 30 feet behind the Larios car, until they approached the Lakeview Ranch complex of buildings, at which time Larios sounded his horn so that

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4. I credit Larios' in his description of this conversation with Fred Andrews and John Perez and in fact credit all of his testimony as he testified in a sincere manner and had a good memory for detail.

some workers standing near the road would notice Fred Andrews was tailing him. Larios speeded up to 80 to 90 miles an hour in an attempt to outdistance Andrews, but the latter also increased his speed so as to stay directly behind him. Larios drove into the Metzler Ranch premises 15 miles distance from the Lakeview complex. Andrews followed him in and parked his car nearby. Larios alighted from his car, and approached Andrews and asked him why he was following him since he was not a criminal. Andrews replied, "Well you said that.", and added that the reason he was following Larios was that he had nothing else to do.

Larios left the Metzler Ranch and continued east on the highway increasing his speed to 100 mph, because Fred Andrews was still immediately behind him. Larios remembered a friend's garage in Arvin so he drove there and parked in the garage parking lot. Andrews parked nearby and sat looking at Larios for about 20 minutes and then departed.

Fred Andrews' explanation for following Larios was because he believed that Larios was the person who had tampered with the main pump at Respondent's ranch the previous day. An employee had reported to Andrews that a red Camaro had been seen the day before leaving the area where the pump was located and it was discovered immediately afterwards that the pump had been turned on. Andrews testified that if not discovered and corrected, such tampering could have damaged large amounts of crops planted at the ranch, which he valued at 10 million dollars. Consequently, when Andrews saw Larios the next morning in a red Camaro he assertedly decided that it was probably the same car seen leaving the pump area, and so he decided

to keep an eye on Larios to see where he would go.[5/] He denied traveling at the high speeds mentioned by Larios, but admitted he drove at a sufficient speed behind Larios to avoid losing him. Andrews testified that he had another motive for following Larios; that he was traveling in that direction anyway since he had a business appointment at that time.

John Perez testified that he received a call from Fred Andrews to come and talk to Larios. When he arrived at the Santiago Ranch site he conferred with Andrews first and then went and talked with Larios. Andrews denied that Perez talked to him before Perez spoke to Larios.

B. Analysis and Conclusion

I have decided to consider these two allegations, of the refusal to hire and the chase incident, together since Respondent's conduct in both incidents reflects its attitude toward Francisco Larios.

General Counsel has alleged that Respondent violated section 1153(c) and (d) and (a) in regard to both allegations and the record reflects that Respondent failed and refused to rehire Larios as an irrigator or reinstate him on the weed-and-thin crew, and intimidated him by Fred Andrews' high-speed automobile pursuit, because of Larios' union activity and because he filed charges, and testified, against Respondent in ALRB proceedings.

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5. In response to my question about whether he thought the UFW might be behind this attempt to sabotage Respondent's irrigation, system Fred Andrews replied, "To be very honest with you, it was the fact that they tampered with the heart of our irrigation system. If it was the UFW, that's really their business. My concern was, don't tamper with the irrigation, I don't care who you are."

Section 1153(c) provides that it is an unfair labor practice for an agricultural employer by discrimination in regard to hiring or tenure of employment, or any term or condition of employment, to encourage or discourage membership in any labor organization. Since both allegations concerned Respondent's reactions to Larios' request for work, they are clearly governed by section 1153(c), (d) and (a), assuming that Respondent's acts and conduct herein were based on Larios' union activities and his filing charges and giving testimony in ALRB proceedings.

In cases of this type, the General Counsel has the burden of proving, by a preponderance of the evidence, that the employee engaged in the union, or other protected, activity and that the employer had knowledge thereof. Respondent stipulated to those facts.

General Counsel must also prove causal connection between the employer's knowledge of the protected activity and its subsequent discriminatory action(s) against the employee.

The ALRB in O. P. Murphy Produce Co. dba O. P. Murphy & Sons 7 ALRB No. 37, has adopted the reasoning in the MLRB case Wright Line which in effect affirms the "but for" rule. In other words General Counsel must prove that Respondent would have rehired Larios if he had not been active in the UFW and if he had not filed charges and testified against Respondent before the ALRB. There are various indications of unlawful discrimincation.

First of all, to be sure, if Respondent had not intended to block Larios' rehire, Bob Garcia at least in one of the four telephone calls Larios made to him between September 5, 1980 and

January 1, 1981, in all probability would have told Larios not to depend on a written application and telephone calls to the personnel department for a job as an irrigator and that the proper procedure to obtain such work was to apply directly to the irrigation supervisors and/or foremen. Also, had Respondent not sought to discourage or prevent the rehire of Larios, Garcia would most likely have told him during at least one of the four telephone conversations that the best time to apply for irrigation work was in May and June. Although Garcia "thought" he had done so, I credit Larios[1] testimony that he had not.[6/]

Contrary to Respondent's contention in its post-hearing brief, Larios did request irrigation work at the right time of the year. He requested irrigation work from Garcia when they were in contact with respect to the Board's reinstatement order during the last ten days of April and he requested such work from Castro on May 4 when Castro informed him of the weed-and-thin crew opening.

Furthermore, the manner in which Respondent treated Larios in respect to the Board's reinstatement order shows that it had no desire whatsoever to have Larios return to its employ in any capacity. The whole scenario surrounding the so-called offers of reinstatement indicates a design to make the offers difficult or impossible to accept.

Larios responded immediately to Respondent's letter containing the offer for reinstatement and made a reasonable

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6. Garcia's failure to mention anything about the May and June dates is very much in keeping with his tight-mouth policy with Larios about the correct method to apply for irrigation work.

request, for a 2, 3 or 4 day delay in reporting to work, to allow him sufficient time to give notice to his current employer and to put his things in order. Garcia informed him that he would find out about it from his superiors and asked Larios to telephone the next day. During the next five to six days, Larios received no concrete answer, just an undeserved scolding from Garcia for not repeating a phone call on one day, and then Garcia's delay in inquiring of his superiors about permission for the 2, 3 or 4 day lead time, sufficient delay so that the work ran out on the weed-and-thin crew. On May 4, Larios made a new contact with Respondent about irrigation work and late that afternoon Castro, under instructions from Garcia, telephoned Larios to tell him to report to work the next morning. Garcia knew about Larios' need for the lead time but he still had Castro extend the offer to Larios with extremely short notice. There is a very strong inference that this job call was well calculated to make the offer of reinstatement difficult or impossible for Larios to accept.

It is true that Larios failed to inform Castro about having to work the 4 p.m. shift at his current employment on the day of the "offer", and failed to ask for the needed two to four day reporting time delay, but Larios[1] failure in that respect in no way justifies Respondent's cavalier conduct, conduct designed to make it unlikely that Larios would be able to accept the purported offer of work. As Respondent was apparently anxious to find out whether its ruse had produced the desired results, Castro went out early the next morning to check whether Larios had reported to work.

Fred Andrews' long and persistent automobile pursuit of

Larios on July 8 also creates a strong inference that Respondent was determined to discourage and restrain Larios from seeking rehire. On that day, Larios did at last follow the proper procedure to apply for irrigation work and ended up the object of an intimidating pursuit at high speeds for approximately 25 miles by one of the Respondent's owners. He inquired of this owner the reason for the chase and in effect received no explanation. However one of the reasonable foreseeable effects of such coercive treatment would be to discourage him from asking for employment again.

On the morning of the chase, Larios had inquired of Castro about obtaining irrigation work and was referred to Perez. Larios then went to the Santiago Ranch and encountered Fred Andrews, who, upon hearing Larios[1] request, immediately tried to discourage him from seeking work at Respondent's ranch, by asking, "Why not stay at your present job?". Andrews then called Perez purportedly to attend to Larios[1] request for work. Perez arrived, and conferred with Andrews and presumably learned that Larios was asking for irrigation work. Instead of announcing to Larios the lack of irrigation work at that time, he inquired "What do you want?" Larios repeated his request for irrigation work. Immediately after Perez responded in the negative, Andrews ordered Larios off the ranch. The breakneck pursuit by automobile followed immediately thereafter.[7/]

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7. Andrews denied he knew Larios but his treatment of Larios at the Santiago Ranch and immediately thereafter indicates he knew exactly who Larios was. Andrews' surprise that Larios had been offered a job at Respondent's, his suggestion that Larios remain at his current job, his stern command for Larios to leave the ranch immediately and the ensuing relentless high speed pursuit all support this conclusion.

Andrews testified that Larios traveled at a high speed while he traveled at a discreet speed but he admitted that he was able to keep Larios' automobile in sight. This is illogical and would not likely have caused Larios to stop, alight from his vehicle and ask Andrews why he was following him. It is clear from the record that Andrews tailgated Larios at a high rate of speed, an action clearly calculated to intimidate him.

In his testimony, Andrews contended that the only reason for the pursuit was because he thought Larios, due to his driving a red Camaro, was the person who had tampered with the irrigation pump. If that were the case, the logical course of action would have been for Andrews to inform Larios of his suspicions and to warn him about the legal consequences for Larios or anyone else who engages in any such malicious mischief. But at the tine of the pursuit, Andrews said nothing of the kind, but merely made the completely implausible statement that he had followed Larios because he had nothing else to do.

These acts and conduct of Respondent, when taken all together it, establish by a preponderance of the evidence that Respondent was determined not to rehire Larios and, since Larios had been a competent irrigator for three years at Respondent's ranch, without any criticism of his work, and had indicated on numerous occasions his desire to go to work for Respondent as an irrigator, he would normally have received much different treatment from Respondent than he did. The only logical basis for such discriminatory treatment was his union activities, (the most recent one being his accompanying UFW organizer Villarino to Respondent's

fields in June and being there observed by supervisor John Perez) and his seeking redress from the ALRB against Respondent.

Accordingly, I conclude that Respondent violated section 1153(c),(d) and (a) of the Act by its discriminatory treatment of Francisco Larios on each occasion when he applied for employment as an irrigator in April, May and July 1981.

Respondent argues that General Counsel must prove that a job as an irrigator must have been available during the period Respondent allegedly discriminated against Larios, that is, from January 1 to July 8, 1981, and that the employer hired others during that period to fill vacant jobs for which Larios properly applied, and that otherwise no violation can be found. In the instant case, I have found that Respondent discriminated against Larios but, according to Respondent's argument, if an employer for any reason fails to hire another person for the job sought by a discriminatee between the discriminatory action and a hearing on the issues the employer should escape liability completely. I disagree. The failure of the General Counsel to prove that Respondent hired an irrigator between January and the hearing in October 1981 does not foreclose the finding of a violation as to Larios. However, it nay be a factor for the Board's Compliance Officer to consider in determining the starting date of the back-pay period.

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VI. The Allegation that Mike Andrews Allegedly Drove His Vehicle Dangerously Close to the Picketing Employees in Order to Harass Them

A. Facts

Pablo Altamirano, a striking employee, testified that during the first few days of the strike he and other strikers were patrolling on the Copus Road shoulder in front of Respondent's Santiago Ranch office. On various occasions, Mike Andrews and Dave Otey drove their pickup trucks at a high rate of speed close to where the pickets were walking. Two wheels of their vehicles were on the road pavement and the two other wheels were off the pavement so that dirt, rocks and dust were scattered at the pickets.

In his testimony David Otey denied ever driving his pickup close enough to the pickets to throw rocks and dirt at them, or driving with any wheel of his pickup on the shoulder of the road. Mike Andrews also denied ever driving a motor vehicle at the pickets intentionally and said that the only time he drove on the shoulder of the road was to give a tractor adequate room on the road but that he never did that where any pickets were located.

In the complaint, General Counsel alleged that one of the victims of a recklessly-driven pickup truck was striking-employee Jose Lopez. Although General Counsel called Lopez to testify on other matters, he was not asked any questions about the alleged incidents involving pickups driven by Dave Otey or Mike Andrews.

B. Analysis and Conclusion

General Counsel has the burden to prove by a preponderance of the evidence, the truth of the allegations in the complaint.

The determination of the truth of the allegation herein is

strictly a question of credibility. There is uncorroborated evidence by one of the strikers, Pablo Altamirano, about the alleged dangerous driving. Furthermore, General Counsel failed to ask Jose Lopez, the employee named in the complaint in respect to this allegation, questions about these driving incidents although he was asked to testify about other matters.

On the other hand, Dave Otey and Mike Andrews both credibly testified that they had never driven their vehicles off the paved road at the pickets.

The phrase "preponderance of the evidence" is usually defined in terms of probability of truth; e.g. such evidence as, when weighed with that opposed to it, has more convincing force, and from which it results that the greater probability of proof lies therein.

In weighing the evidence herein, the proof indicating that Otey and Andrews drove near the employees in a manacing manner had no more convincing force than the proof that they did not. Accordingly I must find that General Counsel has failed to prove this allegation by a preponderance of the evidence and therefore I recommend that this allegation be dismissed.

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VII. Alleged Discrimination Against Francisco Luevano in Job Assignments

A. Facts

Francisco Luevano was the representative of the tractor drivers during the collective bargaining negotiations between Respondent and the UFW which took place between February 1981 and July 8, 1981.[8/] He had worked for Respondent as a tractor driver for five years. His immediate supervisors were the brothers Jesus and Leonel Terrazas.

Luevano testified that after every occasion he attended negotiations sessions, his foremen would invariably return him to a different job assignment rather than to the one he had been working prior to the sessions. He claimed that this practice was not followed with other workers and that the reason for it was that he was a union activist and was the union negotiator for the tractor drivers. He also testified that the foremen failed to assign him tractor work in the higher-paying vegetable assignments[9/] because of his activities on behalf of the union.

In January, Luevano drove a tractor in the lettuce fields. In February, the negotiations started while Luevano was working in

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8. Luevano was appointed such representative in November 1980. Respondent stipulated that Respondent had knowledge of Luevano's union activities and also the fact that he had filed several unfair labor practice charges with the ALRB and in connection therewith had testified at hearings before said agency. In March 1981 Luevano also protested to various supervisors at Respondent's including Bob Garcia, Respondent's personnel director, about himself and other workers being obliged to work on Sundays.

9. Tractor work on vegetables (lettuce, melon, etc.) was paid at the rate of $6.00 per hour while non-vegetable work, i.e. cotton was only paid at the rate of $4.92 per hour.

the melons. After February, Luevano worked almost exclusively in the cotton fields, with the exception of several days when he worked in the yard repairing and adjusting tractors and other equipment.

Luevano testified that on one occasion he replaced a tractor driver by the name of Avelino de la Torre who was absent and, upon the latter's return, he was sent to his previous assignment and Luevano was assigned different work. Luevano also testified that on another occasion James Alvarez, a tractor driver, was absent and upon his return he went back to his previous assignment while his replacement was sent elsewhere. However Luevano testified to no other similar incidents. Carlos Heredia, a tractor driver, testified that during the Spring of 1981 Francisco Luevano was the only tractor driver who was not returned to his previous assignment after an absence but failed to provide concrete examples. He admitted though that Luevano was absent one to three days while the other tractor drivers would be absent only one day at a tine.

After Luevano returned from the last negotiation session or. July 7, 1981 (the strike commenced two days later), Jesus Terraza assigned him to work in the yard to remove a bar from the spraying machines used in the cotton. Luevano protested and asked why he was not being returned to the job assignment which he had just prior to the negotiating session. He added that there was work available in the melons and he should be assigned there. According to Luevano's testimony, Terrazas replied that he did not want to give him that work because he had participated in the negotiations. Luevano refused to perform the work in the yard and Terrazas told him that he would be laid off. Luevano and Terraza then conferred with Bob Garcia and Luevano explained that he had sufficient qualifications

to work in the melons and Terrazas confirmed that fact to Garcia, but added, "We don't want him in the vegetables and he knows why." To this, Luevano replied in effect that he knew the reason and it was that the two tractor drivers assigned to that work took care of the work so it would last longer and if Luevano were assigned the work he would do it faster and the comparison would not be favorable to the two incumbent tractor drivers, so the latter would prefer not to have him around.

Garcia told Luevano he would look into the matter but directed him to perform the work assigned to him by Terrazas.

Jesus Terrazas admitted in this testimony that he and his brother Leonel assigned Luevano different tasks after he returned from negotiations, that Luevano on such occasions complained and that they then explained the reasons to him, i.e., the inconvenience caused by his being absent and tried to assure him the reassignments had nothing to do with his being the union negotiator. Terraza pointed out that Luevano had worked slightly more in the vegetables in 1981 than in 1980. Luevano confirmed that fact in his own testimony when he said he had worked 85-90% of the time in the cotton in 1980 and 80 to 85% of the time in the cotton in 1981. Terrazas admitted assigning Luevano to change the bars on the tractors in July 1981 but explained that it was Respondent's policy to rotate the yardwork among all the tractor drivers.

Almost all of the tractor drivers were active in the union and Respondent had knowledge of that fact. Seniority was utilized for layoffs and rehires but ability was the criterion used for job assignments. Approximately seven tractor drivers had more seniority than Luevano.

B. Analysis and Conclusion

The General Counsel has the burden of establishing the elements which go to prove the discriminatory nature of the employer's action ... in this case the assignment of work to Francisco Luevano. To establish such a prima facie case, General Counsel must show by the preponderance of the evidence that the individual engaged in union acitivites, that Respondent had knowledge of such activity and that there was some causal connection between the protected activity and the resultant discriminatory assignments. The state's highest court, as well as the ALRB and the NLRB, have held that the standard to be applied is whether the employer's conduct, (in this case the failure to permit Luevano to finish his work assignments every time he returned from negotiation sessions), would not have occurred "but for" his known union activity.[10/]

Needless to say, Luevano was very active in the union, i.e. representative of the tractor drivers at the collective bargaining negotiations and, furthermore, Respondent stipulated to his long history of union activities and filing charges with the Board, and Respondent's knowledge thereof.

So the only issue to decide is whether there was a causal connection between his protected activity and the work assignments following his negotiation sessions. Would Respondent have made his

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10. Martori Brothers Distributors v. Agricultural Labor Relations Board (1981) 29 Cal.3d 721, citing Wright Line, a division of Wright Lines, Inc. (1980) 251 NLRB No. 150, 105 LRRB 1169, Royal Packing Company v. Agricultural Labor Relations Board (1980) 101 Cal.App.3d 826.

work assignments in a different manner if he had not been a union activist?

In order for General Counsel to prove that Luevano received discriminatory treatment, he would first have to show that Respondent engaged in a different practice with respect to non-union tractor drivers' work assignments in situations where they returned to work after an absence of one to three days. This is a difficult task since almost all the tractor drivers are union activists and most of them only missed work one day at a time.

Luevano and his co-tractor driver Carlos Heredia both testified that Respondent has a general practice of reassigning workers to their previous tasks after absences and that Luevano was the only exception. However only Luevano testified about two actual occasions of this alleged practice. On one of the two occasions Luevano replaced Avelino de la Torre and upon the latter's return Luevano had to cede the assignment back to de la Torre. However no evidence was presented as to the presence or absence of de la Torre's union activities.

It could be argued that Respondent singled out Luevano from all the other pro-union tractor drivers because he was the most active and for that reason discriminated against him. However there is no evidence of that as General Counsel failed to offer proof of incidents where any union activists reported to work after a one, two, or three day absence and were returned to their previous assignment.

Moreover the tractor foremen, Jessie and Leonel Terrazas credibly testified that the reason they failed to reassign Luevano

to his previous tasks was simply the inconvenience of switching tractor drivers on the same work assignment because a certain amount of continuity was needed to avoid mistakes.

As General Counsel has failed to show any disparate treatment by Respondent of Francisco Luevano in respect to work assignments and Respondent has supplied a legitimate business reason for its assignment practices, I find that there was no causal connection between Respondent's work assignments of Luevano and his union activities and/or his recourse to the ALRB.

However General Counsel argues that Respondent also failed to assign Luevano the better-paying vegetable tractor work because of his union activity and his recourse to the ALRB. General Counsel presented evidence of an incident when Luevano was assigned to lesser paying work in the yard when there was tractor work available in the vegetables, i.e. carrots.

However Luevano himself testified that he worked more in the vegetables in 1981 than he did in 1980. Moreover Jessie Terrazas, one of his foremen substantiated that fact. Furthermore Luevano himself testified to why Respondent declined to assign him to the vegetable work. It was that if he were assigned to the vegetable work he would show up the two tractor drivers customarily assigned to such work by his superior performance and consequently these two tractor drivers would prefer not to have him around. It would appear from that testimony that the Terrazas brothers refrained from assigning Luevano the vegetable work because they wished to placate the two vegetable tractor drivers. That would not constitute a discriminatory or unlawful work assignment under the

ALRA since it has no basis in, or relation to, union activities or other concerted activities.

Accordingly, I find that Respondent did not violate sections 1153(c), (d) or (a) of the Act in its work assignments to Francisco Luevano and therefore I recommend that this allegation be dismissed.

VIII. Respondent's Agents Allegedly Pursued Larios and Huerta on July 10 so as to Harass Them Because of Their Activities on Behalf of the UFW7

A. Facts

Alfredo Huerta went to work as a tractor driver for Respondent on July 10, 1981 the second day of the strike. During the previous evening Leonel Terrazas, one of Respondent's tractor foremen, had contacted him about tractor work and he had accepted.[11/] He reported to work at 6:00 the next morning and worked 4^5 hours driving a tractor. At about 10:30 a.m. Terrazas told him his friends had walked out on strike. Huerta thereupon drove the tractor to the shop area and joined the picket line.

Later the same day at about 3:30 p.m. Francisco Larios and Alfredo Huerta decided to drive in Larios[1] red Camaro west along Copus Road to see whether any strikebreakers were working. They drove a mile past the Santiago office, turned around and, as they passed the Santiago office again, Mike Andrews, (son of one of the Respondent's owners Fred Andrews) driving a white Sam Andrews pickup, pulled out onto Copus Road and began to follow them at a

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11. Terrazas testified that he mentioned to Huerta about the strike when he called him about the job opening.

very close distance.[12/] Larios and Huerta arrived at the Lakeview complex and parked their car in the parking lot of the church just opposite the complex, and observed Mike Andrews park nearby on the shoulder of the road. They left the parking lot and drove west once again on Copus Road and noticed that a blue automobile driven by Fred Andrews had joined the white pickup in the surveillance, the former vehicle tailgating them and the latter vehicle about five feet in front of them. The three vehicles proceeded in that manner west on Copus Road for about 3 to 4 minutes. Larios and Huerta decided to take measures to extricate themselves from their unwanted "escort" predicament and pulled in at a friend's (Frank Pulido) trailer house which was adjacent to Copus Road. They observed the two vehicles that were following them park a short distance away. They asked Pulido to observe the two vehicles that were escorting them "just in case something happened". They entered Pulido's trailer and Huerta telephoned the sheriff's office which referred him to the Highway Patrol. He was informed by the latter agency that nothing could be done about the pursuit since none of the escorting vehicles had actually tried to ram their vehicle.[13/]

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12. Mike Andrews testified that he first observed the red Camaro slowing down along Copus Road near where the irrigation pumps were located and then speeding up. He suspected that the occupants might be planning to damage the pumps so he decided to keep a "very casual eye" on them and followed them at a 100 yards distance. After a short time he ceased following and commenced to inspect pipes in the field. Shortly thereafter he received a radio call from his father, Fred Andrews, who requested him to join him in keeping track of the same red Camaro.

13. The parties stipulated that Frank Pulido's testimony would be that Larios and Huerta stopped on that date at his trailer house, made the telephone calls and that he observed Respondent's vehicles parked nearby.

While Larios and Huerta were at Pulido's trailer house, Fred Andrews parked his vehicle at the edge of the road, while Mike Andrews drove away but soon returned with guard Dave Otey driving another company pickup. Fred Andrews thereupon left the area. Larios and Huerta drove out on Copus Road again, this time in an eastward direction, and immediately Mike Andrews and Dave Otey boxed them in, Otey driving ahead of them and Mike Andrews driving behind them.

By that time, Larios and Huerta were very fearful since Respondent's two vehicles continued to lead and follow them and thus block them in whichever direction they traveled. They were especially afraid that Respondent's vehicles would attempt to force them off the road and that an accident would occur. They turned off Copus Road onto a dirt road in the fields and proceeded at 65 miles per hour in an attempt to lose their pursuers, but one of Respondent's pickups was able to stay close to them. They turned their automobile back toward Copus Road and stopped near two houses with the idea of telephoning for help. No one was home at one house and the other had no telephone. Meanwhile Mike Andrews and Dave Otey parked nearby and conferred. Larios and Huerta decided to make one final attempt to escape. Larios accelerated his vehicle quickly, reached' Copus Road and proceeded east on Copus Road at approximately 100 miles per hour with, according to their testimony, Mike Andrews and Dave Otey following approximately ½ mile behind. Larios and Huerta went through a stop sign at the intersection of Copus and Old River Road, continued on to a crossroad, made a right turn and no longer were able to see Respondent's vehicles.

B. Analysis and Conclusion

General Counsel alleges that Respondent's agents Otey and the two Andrews pursued Larios and Huerta on July 10 because of their union activities and therefore violated section 1153(c) of the Act.

The only knowledge Respondent had of Huerta's union activity was his walking off his job the first morning of his employment and joining the picket line. Respondent's knowledge of Larios[1] union activities has already been established with respect to another allegation in the complaint herein. (See Part V; Analysis and Conclusion.) In discussing said allegation, I found that Fred Andrews had pursued Larios just two days previous to discourage or prevent him from applying for irrigation work or reinstatement at Respondent's ranch because he did not want to hire him because of his union activity.

It was the same Fred Andrews who spotted the red Camaro two days later and originated a second chase, this time instructing his son to join therein. The two Andrews "escorted" Larios and Huerta westerly along Copus Road, one driving directly in front of, and one directly behind the Camaro. Respondent has tried to minimize this initial part of the chase in its post-hearing brief, which is logical from its point of view since neither of the Andrews testified about following the red Camaro before Larios parked it in front of Frank Pulido's trailer house. I am unpersuaded by Respondent's argument because if it were true it is highly unlikely that Larios and Huerta would be so frightened that they would telephone the sheriff's office and the Highway Patrol to seek protection. Frank

Pulido's stipulated testimony confirms the fact that Larios and Huerta stopped at his trailer house and made telephone calls. Pulido also saw the two Andrews sitting in their vehicles a short distance away.

I discredit Dave Otey's and Mike Andrew's testimony that they followed the red Camaro at a discreet distance after they left the Pulido trailer area, rather than boxing it in. If it were true about the discreet distance/ it is highly unlikely that Larios would have turned off the road and into the fields and traveled at a dangerous 65 miles per hour in an obvious attempt to escape the pursuers.

In its post-hearing brief/ Respondent argues that it had a legitimate business reason to pursue and that was to protect its property. Respondent points out that two days before, a red Camaro had been reported near important irrigation equipment that had recently been tampered with so Respondent had the right to observe and follow an automobile it believed to be the same one, and to thus make sure no further sabotage of its irrigation equipment occurred.

If Respondent had been motivated only by this alleged desire to protect its property, it is highly unlikely that Otey and the two Andrews would have conducted themselves in such a manner. It would appear that the logical way to achieve its purportedly legitimate goal would have been to follow the red Camaro at a discreet distance, and to approach and inform Larios and Huerta, at one of the three stops, of the reason for the surveillance and to explain that anyone who was caught damaging company property would be arrested and prosecuted for criminal activity. It is true that

Mike Andrews did act according to that criterion of protecting Respondent's property when he first observed the red Camaro and began to follow it at 100 yards distance, observing it slowing down and speeding up. However, it appears from the record that immediately after Fred Andrews communicated with his son Mike about the red Camaro and they united their efforts, the close pursuit and boxing-in commenced. A strong inference can be made that Fred Andrews was the instigator of these extreme measures and that he was motivated by his anti-union hostility toward Larios and his intent to drive Larios away from Respondent's property either as a job applicant or a striker.

There is some dispute as to what occurred after Larios and Huerta left the two houses next to Copus Road and made their successful escape from the pursuers. They testified that either Andrews or Otey continued to follow them along Copus Road for a while but Otey and the two Andrews denied they did so. Perhaps Larios and Huerta mistook other Respondent pickups that happened to be traveling eastward on Copus Road at that same time because of their similar appearances to the erstwhile pursuers. However, at what point the chase terminated is immaterial to my determinations with respect to the basis for Respondent's acts and conduct, so I need make no resolution in that respect.

Respondent argues that the testimony of Larios and Huerta's is suspect for various reasons. Respondent points out that Huerta had no reason to be afraid of Otey and Mike Andrews because Huerta is an ex-Marine who knows the martial arts, and therefore should have approached them at Pulido's trailer area or at their last stop

(at the two houses next to Copus Road) and asked them the reason for the pursuit. However, Huerta had been out of the Marines for some years and from my observation at the hearing was overweight and out of condition. Both Huerta and Larios were a substantially smaller than Otey and Andrews, who were both over 6 feet tall and 200 Ibs. Furthermore, I would not imagine Larios either suggesting or approving such a tactic after the sarcastic remark he received two days before from Fred Andrews when he made a similar request for an explanation for the chase.

Respondent argues that the actions of Larios and Huerta in stopping at Pulido's house, accelerating as they left, and speeding through the fields, reasonably heightened suspicions of Respondent's personnel. I find it is unlikely to have had such an effect since any reasonable interpretation of Larios and Huerta's conduct as aforementioned, would be that of a frightened reaction to Respondent's relentless pursuit.

Respondent asserts another reason to suspect Lario's and Huerta's testimony is certain inconsistencies. However, upon close analysis I find them to be merely normal variations in the verbal descriptions of events and not inconsistencies at all.

Accordingly I find that Respondent violated section 1153(c) and (a) of the Act by it following and intimidating Larios and Huerta because of Larios' union activities.

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IX. The Allegation that Mike Andrews and Respondent's Guards Allegedly Harassed and Threatened Strikers With Guns, Rifles and Knives

A. Facts

Francisco Larios and Alfredo Huerta testified that they observed a rifle in the back window of Mike Andrews' pickup truck while he was pursuing them on July 10. However they testified that the rifle was no longer visible there during the second part of the automobile pursuit episode.

Andrews admitted that he carried under the seat of his pickup truck a shotgun for bird hunting purposes at the ranch in the evening. However he did not remember whether he had it in his vehicle on July 10 while he was following Larios and Huerta. He admitted that it was a possibility. Dave Otey testified that he had seen Mike Andrews carry a shotgun in the back window of his pickup truck but he had not seen it on the day of the pursuit. However Otey had not joined in the chase until, according to Larios[1] and Huerta's testimony/ a point when the rifle was no longer visible through the back window of the pickup truck.

General Counsel failed to call Juan Orozco, who had beer, named in the complaint as a striker who had allegedly been harassed and threatened by Mike Andrews and Respondent's guards with the abovementioned weapons. The other striker listed, who allegedly had been harassed and threatened, was Jose Lopez who was called by General Counsel to testify on other matters in this hearing. However General Counsel failed to ask him any questions about the allegations, herein in question.

B. Analysis and Conclusion

Mike Andrews admitted carrying a shotgun in his pickup at times albeit under the seat and was not sure whether he had it with him during the chase. However Otey testified that Andrews carried the shotgun in the pickup back window. Larios and Huerta both testified seeing it there during the chase but only during the first part of the pursuit. It is evident from this testimony that Andrews actually carried the shotgun, visible through the pickup window at least during the first part of the chase, but thereafter probably placed it under the seat or removed it from the pickup.

General Counsel alleged in the complaint that Juan Orozco and Jose Lopez had been threatened with various weapons by Mike Andrews and/or guards but did not call either of those two employees to testify in that regard.

I find that Andrews' carrying a shotgun in the back window of his pickup for part of the time he was chasing Larios and Huerta does not by itself amount to unlawful coercion or restraint of agricultural employees. I also find that in all probability Andrews carried the shotgun in his pickup truck not to intimidate strikers but for the legitimate purpose of hunting birds. Accordingly, I recommend that this allegation be dismissed.

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X. The Allegation that Respondent Supervisors Interfered With UFW Respresentative Maurilio Urias in His Conversation With Replacement Workers

A. Facts

On July 10, 1981, UFW representative Maurilio Urias was driving along Copus Road and stopped to join one of the strike leaders, employee Francisco Iniquez, in talking to some replacement workers. Urias conversed with the workers for approximately ten minutes in a peaceful and friendly manner. Suddenly Personnel Director Bob Garcia arrived and shouted at the replacement workers that they should not let Urias stop them from working since he had no right to do so. Garcia accused Urias of holding the workers by force.[14/] By that time a deputy sheriff, who had been in close proximity ever since Garcia had arrived, approached the group and Urias said to him, "Why is Garcia here to provoke me? Send him out of here." The deputy sheriff thereupon asked Garcia to leave pointing out to him that it would be better for him to do so and thereby avoid any problems. Garcia complied and departed.

Urias continued to converse with the replacement workers in an amiable fashion. A short while later, Fred Andrews approached Urias, interrupted his conversation with the workers, and stood face to face with him and said, "You do not have any balls", three or four times. Mario Vargas, a fellow UFW representative pulled on

14. Garcia testified that he told the workers that they had every right to work the same way the strikers had to strike. Garcia also testified that all during the time he was at the group a short stocky UFW representative stood directly behind him and continued to direct a stream of vulgar epithets at him, so much that he was fearful that he might resort to force against his person. It appears from other testimony that the UFW representative on question was Mario Vargas.

Urias' sleeve and said to him, "He is trying to provoke you." Andrews turned toward the replacement workers and told them to go to the office because he wanted to talk to them. Urias and Vargas then departed.

Fred Andrews testified at the hearing on other matters but Respondent's counsel failed to ask him any questions about this incident.

B. Analysis and Conclusion

To constitute a violation of section 1153(a) of the Act (8(a)(l) under the NLRA) an employer's motive is immaterial as long as its acts or conduct, reasonably tends to interfere with, restrain or coerce employees in the free exercise of their rights under section 1152.15/

In the instant situation, the 10 to 15 nonstriking employees had decided to remain alongside a public road and listen to union representative Maurilio Urias talk to them about the strike. It is apparent, therefore, that they were freely exercising their rights as guaranteed under the Act.

Robert Garcia, Respondent's personnel director, arrived, interrupted the conversation and told the workers that they should not let Urias stop them from working, that Urias was holding them by force and that they had just as much right to work as the strikers had to strike.

In so doing, Garcia did not coerce or restrain the employees with respect to their right to inform themselves about the

15. American Freiqhtways Co. (1959) 124 NLRB 146, 44 LRRM 1302.

strike but he certainly interfered with that right. The Board considers the right of employees to learn about the issues of a strike as extremely important, as evidenced by its holding in Bruce Church 7 ALRB No. 20, and Growers' Exchange 8 ALRB No. 7, in which the Board granted access to union representatives to enter the employers' premises at noontime during a strike to converse with the nonstriking workers. Furthermore, the Board has granted union representatives the right to enter an employer's premises during election campaigns and has determined that supervisors have no right to interrupt the conversations taking place between union representatives and workers. See Harry Carian Sales 3 ALRB No. 46. It was a comparable situation when Garcia, a supervisor, interrupted the conversation between union representative Maurelio Urias and the ten to fifteen nonstriking employees.

Respondent argues that Garcia had the right to do this because he in good faith believed that the 8 union representatives, (actually organizers and strikers) were detaining the 10-15 nonstriking employees by force. I am unpersuaded that Garcia had such a good-faith belief since the nonstriking employees outnumbered the union people and, furthermore, he had alternatives available to him at that time to determine whether the union people were in fact detaining or intimidating the nonstriking workers by asking then if that were so; or to ask the deputy sheriff who was on the scene whether any coercion or force was being used by union agents. Garcia failed to make either type of inquiry but rather precipatedly interjected himself into the conversation. Although Garcia had the claimed belief about strikers intimidating nonstrikers, it would not

appear to have been a good-faith belief. Even if it were, it is not a defense to a 1153(a) charge since neither an employer's intent nor the effects of its conduct is relevant to finding a violation. The test is whether its conduct reasonably tended to interfere or coerce.

If Garcia's interruption of the conversation between Urias and the nonstrikers was a violation of section 1153(a) of the Act, Fred Andrews' was even more so. Andrews not only interrupted the conversation, he intimidated Maurilio Urias, the UFW representative, in the presence of the nonstriking employees by approaching Urias and standing face to face with him and uttering insults at him in vulgar terms. He immediately followed up this action by telling the employees to go to the office because he wanted to talk to them. So, in effect, Andrews terminated the meeting between Urias and the nonstrikers. Respondent has presented no evidence of any business reason whatsoever for Andrews' request that the workers go to his office. If he suddenly felt a need to talk to them at his office about their work assignments, a legitimate business reason, no evidence to that effect was presented at the hearing.

As stated, supra, my interpretation of the Board's decisions in this area is that the Board would extend the protection of section 1153(a) to conversations away from an employer's premises between union organizers and nonstriking employees during strike situations and would not permit Respondent's supervisors to interrupt or terminate such conversations, and clearly so when Respondent has no legitimate business reason to do so.

Accordingly I conclude Respondent violated section 1153(a) of the Act by Garcia's interruption of the conversation between

Urias and the nonstrikers and again by Andrews' interruption and termination of the conversation between Urias and the nonstrikers.

XI. The Allegation that Respondent's Supervisors Pursued and Detained a Motor Vehicle and its Occupants, UFW Strikers

A. Facts

On the evening of August 2, 1981, strikers picketed in front of Respondent's Lakeview building complex (which includes the labor camp). At approximately 11 p.m., UFW field director David Villarino and strikers Leodegardio Alvarez, Gilberto Lopez, Wellington Escalante, Alfredo Vazquez, Jose Alvarez, and Jose Sierros departed the picketing site in two automobiles and headed westward on Copus Road. Villarino, the driver of one of the vehicles, shouted to the strikers remaining at the picket site that they were going to check for any strike breakers coming to work in the fields during the night hours and would be back shortly. Villarino testified though that another reason for the trip was to eat something in Taft, a town 15 miles away.

After about 25 minutes had passed, the strikers, according to Pablo Altamirano's testimony, became concerned about the fact that Villarino and the rest had not yet returned, so Pablo Altamirano, Carlos Heredia and two other strikers set out to find them. Altamirano drove his yellow Camaro, with his fellow strikers as passengers, by the Santiago Ranch offices where they were observed by guard Dave Otey, supervisors Frank Castro, John Perez and Leonel Terrazas, who were sitting in or outside the office drinking some beer. The four recognized the yellow Camaro as one they had often seen in the vicinity of the picket lines. Because there had been much destruction of irrigation pipes and equipment in

the fields at night during the strike and they were suspicious that the UFW strikers were responsible, the four decided to follow the strikers, in two vehicles, in order to prevent further damage to the farm equipment and the irrigation system. After traveling a mile, Otey, Castro, Perez and Terrazas noticed four men running out of a field in close proximity to a pump house.[16/] The four men (employees Altamirano, Heredia, Lupe Esparza and Abel Monroy) entered the yellow Camaro, turned around and drove east along Copus Road in the direction of the Lakeview complex whence they had come.

The two company vehicles, with Otey and Perez in one and Castro and Terrazas in the other, also turned around and resumed following the Camaro. Otey and Castro discussed the situation over the vehicle radios and decided to stop the Camaro and detain the four occupants until a law officer could be summoned. Castro radioed the sheriff department and requested that deputies be sent to Copus Road. Castro overtook and passed the Camaro, crossed over in front of it, forcing it to stop at the side of the road. The pickup truck driven by Castro parked directly in front of the Camaro and the pickup truck driven by Otey parked directly behind the Camaro. In a matter of a few seconds, another pickup truck driven

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16. In their testimony Altamirano and Heredia, the only two occupants of Altamirano's automobile to testify, never mentioned anything about alighting from the yellow Camaro. They testified that after proceeding a mile past the Santiago Ranch headquarters they decided to return to Lakeview because they had not seen any sign of Villarino or the rest. However I discredit this testimony because it is highly unlikely that after an absence of only 25 minutes the strikers would be so concerned about their companions' delay so as to go search for them. Furthermore all of Respondent's witnesses credibly testified that they observed four individuals run out of the field and climb into the Camaro.

by one of the uniformed guards who had been in radio contact with Otey and Castro, pulled up and parked on the roadway side of the Camaro, thus boxing it in. The guard alighted from the pickup and came over to the Camaro and requested identification from its driver Pablo Altamirano. Altamirano refused to comply and stated to the guard that he was under no obligation to do so because the guard was not a law officer. The guard said he would call the police and Altamirano said it was all right and he would wait.

Shortly thereafter Maurelio Urias and Leonardo Villanueva arrived in an automobile driven by Villanueva.[17/] Urias approached Altamirano who was still sitting in the blocked-in Camaro and asked him what had happened. Altamirano explained the series of events that had led up to his current situation. Urias shouted that Respondent's agents had no right to detain him and that he was free to leave in his automobile. Just at that moment Frank Castro began to move his pickup in order to, according to his testimony, move it onto the shoulder of the road so it would not intrude into the traffic flow. Urias interpreted this move as an attempt by Castro to depart and shouted to Villanueva to prevent him from doing so even if a collision occurred. Urias testified that he did not want Castro with his pickup to leave the area because he wanted Castro to be there when the sheriffs arrived so they could see from the position of the vehicles how Castro had forced the Altamirano vehicle off the road. Just as Castro was beginning to move his

17. Urias and Villanueva had been at the Lakeview picketing site and at about 1 a.m. began to worry why neither the Villarino nor the Altamirano parties had returned so they set out along Copus Road to find them.

pickup, Villanueva backed his automobile towards the former's vehicle and the two collided. UFW representatives and strikers and Respondent's supervisors and guards began to argue heatedly about the collision but almost immediately sheriff deputies arrived, listened to the arguments propounded by both sides and decided not to cite anyone. The sheriffs departed and the other persons went their own ways.

B. Analysis and Conclusion

General Counsel alleges that Respondent intimidated and harassed UFW organizers and strikers, because of their union activity and their support of the UFW, by running them off the road and detaining them.

Respondent argues first that no violation of the ALRA could have occurred since the UFW organizers and strikers were engaged in illegal activities, i.e., trespass and an attempt to destroy personal property and therefore such activity is not entitled to the protection of section 1152 of the Act. Respondent further argues that even if the ALO credits the testimony of General Counsel's witnesses that they were not engaged in such unlawful activity but were merely on the lookout for strikebreakers, that still no violation was committed since Respondent's agents acted in a reasonable manner to protect its property.

I find that Respondent's first argument has merit so I need not discuss the reasonableness of Respondent's reaction to acts of trespass committed by the UFW organizers and strikers.

The UFW organizers and strikers were engaged in illegal activity at the time Respondent's agents pursued and apprehended them. There was direct evidence that they were trespassing in one

of Respondent's fields near a water pump during night hours, at approximately between 12 and 1 a.m. It is not necessary to determine whether they were there to damage or sabotage Respondent's irrigation equipment. However, there was credible uncontradicted evidence of extensive damage to Respondent's irrigation system and other farm equipment during the strike, and no evidence as to who was responsible therefore.

Because of these aforementioned inferences and my discrediting of the UFW organizers' and strikers' testimony regarding their purported reasons for being out on the road at or about midnight, I find that whether or not they were attempting to vandalize Respondent's irrigation installation at the pump house, it is clear they committed acts of trespass and were not attempting to locate strikebreakers. There was evidence that no damage was done to the pump house or any other irrigation equipment that night. It appears from the evidence that the four individuals did not have time to achieve whatever purpose they intended, since they were surprised by the approach of the Respondent's two pickups before they could reach the pumphouse. Apparently determining that descretion outweighed valor, they decided to exit the area immediately by running out of the field and into their vehicles and then to drive directly back to join the main group of strikers at Respondent's Lakeview complex.

Accordingly, I find that the UFW organizers and strikers were engaged in illegal activities unprotected by section 1152 of the Act and that Respondent committed no violation of the Act by its reasonable and defensive response to such conduct. Accordingly, I recommend that the allegation be dismissed.

XII. The Allegation that Respondent's Foreman Diego Mireles Threatened Marcelino Vazquez with an Automatic Pistol

A. Facts

Marcelino Vazquez had worked as an irrigator for Respondent for 3^5 years. He was one of the eight irrigators who refused to ride in the bed areas of the pickup trucks on July 8 and later joined in the strike and participated in the picketing.

On August 3, 1981, he was in a gas station in Lament making a call from a telephone booth. Respondent's foreman, Diego Mireles,[18/] had just finished putting gasoline in his pickup truck and paying for it when he addressed Vazquez.

According to testimony of Vasquez the following occurred: Mireles told Vazquez that if he (Vazquez) had any problems with him (Mireles) to let him know about it, and asked whether Vazquez wanted to fight with him. Vazquez asked him why was he talking that way. Mireles replied with a shove and Vazquez shoved him back. Mireles went to the cab of his pickup truck and from a box on the seat took an automatic pistol and threatened to shoot Vazquez. Vazquez responded that he did not have a gun himself. Whereupon Mireles said he would provide him with one and took another gun out of the same box and preferred it to Vasquez. Vazquez rejected the offer.

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18. On the date of the incident, Mireles testified he was not in the employ of Respondent but was working for a labor contractor by the name of Carreon on the Guimarra Ranch. He said he last worked for Respondent as a foreman in the melon harvest a month or two before this incident and returned to work for Respondent about a month after this incident as a foreman for a weed-and-thin crew. Vazguez testified that Diego Mireles was a contractor who worked for Respondent and that on August 3, the day of the incident, he knew that Diego Mireles was working for Respondent because in those days he was working in the melon harvest. General Counsel failed to present any evidence of the date the melon harvest ended.

Mireles addressed some vulgar remarks to Vazquez and departed.

Diego Mireles testified that he had considered Vazquez a friend of his before the commencement of the strike. Vazquez had been a frequent visitor to the Mireles home and Mireles had assisted Vazquez in finding a residence and had lent him a television set. He had also come to his aid in two violent incidents in which Vazquez had been involved. On one of those occasions, Vazquez had shot a man and at another time had wounded a man with a knife. On both occasions, Mireles had provided Vazquez with refuge in his house.

However after the strike began, Vazquez[1] attitude toward Mireles changed radically. Vazquez periodically followed Mireles around and shouted vulgar insults to him and threatened that if he continued to work at Respondent's he would beat him up.[19/] Mireles also claimed that every time he passed by three or four strikers they would shout at him that if he continued to work at Respondent's they would beat him up or kill him. Mireles testified that because of these threats he began to carry a gun in his pickup truck. On one occasion, before his encounter with Vazquez in the gasoline station, Vazquez and other strikers had picketed Mireles' house and had shouted vulgar epithets and threats of physical harm to him and his family members.[20/]

19. Mireles is 50 years old, 5'4" and weighs 145 pounds. Vazquez is about the same size but is only 18 years old.

20. Vazquez never testified about his earlier friendship with Mireles or his changed attitude toward Mireles after the strike began or the encounters and threats during General Counsel's case-in-chief. General Counsel failed to recall him during her rebuttal case so Mireles' version of this background information stands uncontroverted.

According to Mireles[1] testimony, the following is what occurred at the gas station. As he finished with the gasoline transaction, he noticed Marcelino Vazquez in the nearby telephone booth. Recalling Vazquez[1] recently changed attitude toward him and his recent acts of enmity, Mireles approached Vazquez and asked him what he had against him and what he wanted. Vazquez said nothing and just stared at Mireles. Mireles climbed back into his pickup and departed. Mireles admitted that he had two guns with him and that they were lying on the front seat and in view of Vasquez,[21/]

After that incident, Mireles, accompanied by his son, encountered Vazquez in a bar with other strikers and Vazquez and the group shouted the same epithets and threats at them as before.

B. Analysis and Conclusion

Respondent argues that at the time of the alleged gun-duel challenge at the gas station, Diego Mireles was not in the employ of Respondent and therefore his conduct cannot be attributed to Respondent. Moreover, Respondent points out that General Counsel failed to establish a connection between the gun challenge and any protected activity engaged in by Vazquez. A further defense asserted by Respondent is that even if Mireles' conduct can be ascribed to Respondent, Mireles[1] description of the events is true and that of Vazquez is not and therefore Mireles never threatened Vazquez.

I find Respondent's first argument has merit. General

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21. Mireles testified that he had two pickup trucks and had one gun for each one and through a coincidence the two guns were in the pickup he was driving the day of the gas station incident.

Counsel has failed to prove that Diego Mireles was an agent or representative of Respondent at the time of the incident on August 3, 1981. Diego Mireles testified that he was not in the employ of Respondent on August 3 and in fact was working for Anastasio Carreon at the Guimarra Ranch. Vazquez testified that at the time of the incident Mireles was working in Respondent's melon harvest, but General Counsel presented no further evidence on this point including no evidence of the date the melon harvest ended.

In San Diego Nursery Co., Inc. 5 ALRB No. 43, the Board acknowledged that the existence of an agency relationship must be determined by applying common law principles of agency and one of those principles is that the burden of proof is upon the party asserting an agency relationship, both as to the existence of the relationship and as to the nature and extent of the agent's authority. General Counsel has failed to carry this burden. During Respondent's case-in-chief, Mireles testified to the fact that he was not working for Respondent on the date of the alleged incident and General Counsel never presented any evidence to offset or refute such testimony during her case in rebuttal. Furthermore, I find Diego Mireles' testimony in general more worthy of belief than that of Vazquez, as Mireles gave a complete history of his friendship with Vazquez while the latter never gave any indication in his testimony of the long relationship with Mireles. His only testimony on this point was that he had worked a few days in Mireles' crew two years previous but had never spoken to Mireles. Once again General Counsel failed to recall Vazquez during her rebuttal case to contradict any of Mireles' testimony regarding this longstanding

friendship.

I find, therefore, that Mireles was not in the employ of Respondent on or about August 3, 1981 the date of the alleged incident/ and therefore was not an agent of Respondent on that day. Accordingly, Respondent has no responsibility for any of the alleged happenings on that day at the gas station in Lament. Accordingly, I recommend that the allegation be dismissed.

XIII. The Allegation that an Agent of Respondent Inside Labor Camp Aimed Rifle at UFW Representative Maurilio Urias

A. Facts

On August 2 Maurilio Urias was directing picketing in front of Respondent's Lakeview labor camp. Respondent had covered the labor camp fences with a tarpaulin so that it was impossible to see into the labor camp yard or buildings. At approximately 7:00 p.m., in order to observe what was going on inside the labor camp, Urias climbed atop an automobile and noticed an "Anglo-looking" young man (not in a guard uniform but wearing nondescript clothes) talking to another man who was seated at the wheel of a pickup truck. The pickup moved out of Urias' sight and he noticed that the young man had a rifle in his hands. The aforementioned individual raised the rifle and aimed it at Urias for about 4 seconds. Urias observed his hand on the trigger. Urias shouted asking him why he had not shot, and the young man shouted back, "If you jump the fence, I will shoot."

Urias testified that when the rifle was pointed at him the young man was approximately 30 feet away from a small structure used by the guards as a guard house. Furthermore, according to Urias, the young man was closer to the guard house than he was to any other

structure such as the dormitory building, kitchen, the packing house or the fence.

Respondent did not call any witness to testify about this incident.

B. Analysis and Conclusion

General Counsel alleges that Respondent violated section 1153(a) of Act by the act of its agent in pointing a rifle at Maurilio Urias and threatening to shoot him if he scaled the fence.

However, General Counsel presented no evidence to prove that this unidentified young man was, or was acting as, an agent of Respondent during this incident. As Respondent argues, he could have been a nonstriking employee residing at the camp, or one of Respondent's truck drivers.

General Counsel presented no evidence that the unidentified young man was a guard or had been authorized by Respondent to carry a firearm within the labor camp compound or ever received any instructions from Respondent to fire or to threaten to fire upon any UFW representative or striker trying to climb the fence surrounding the labor camp.

There is no evidence that Respondent ever approved or ratified this conduct. General Counsel presented no evidence to indicate that the incident was ever reported to Respondent. Respondent presented credible and uncontradicted evidence that indicated that it had given strict instructions to its uniformed security guards, who were the only ones authorized to carry firearms, that such weapons should not be pointed at or used against any persons except in self-defense.

Accordingly, I recommend that this allegation be dismissed.

XIV. The Allegation that Fred Andrews, John Perez and Respondent's Guards Attempted to Force Automobile With David Villarino and Strikers Off the Road

A. Facts

On the evening of August 2, 1981, UFW organizer David Villarino and some other strikers were picketing Respondent's Lakeview complex and labor camp. Villarino decided that he and six strikers in two automobiles would drive along Copus Road and observe whether any nonstriking employees were working during night hours, and perhaps "get something to eat" at the town of Taft 15 miles distant.

They drove about two or three miles west on Copus Road when he and the other three men in his car decided to alight and urinate along the side of the road. They got back into the car and proceeded toward the Santiago Ranch. Villarino noticed that an individual that he identified as Fred Andrews[22/] was following closely behind him in an automobile with its high beam headlights on. As the three vehicles passed the Santiago Ranch buildings, a pickup driven by an individual identified as John Perez pulled out and joined the alleged Fred Andrews in following the UFW automobiles. As the four-car "caravan" neared Basic School Road, two of Respondent's pickups going in the opposite direction and driven by two uniformed guards passed the caravan, made a U-turn and then joined the alleged Andrews and Perez vehicles in following the two vehicles carrying Villarino and the strikers.

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22. Villarino testified that it was Fred Andrews while General Counsel's other witness to the incident, Leodegardio Alvarez, testified merely that it was Fred Andrews' automobile.

After traveling approximately $1^{1/2}$ miles on Basic School Road, the alleged Andrews speeded up and tried to swerve and force Villarino to the side of the road but was unsuccessful. Then the alleged Andrews speeded up and passed Villarino's vehicle and placed himself directly in front of him and at the same time the alleged Perez drove his vehicle alongside Villarino's vehicle and the latter was effectively blocked in. At that moment, the alleged Andrews and Perez noticed a car (driven by Imogene Beaver) coming in the opposite direction so the alleged Andrews speeded up so the alleged Perez was able to get in front of Villarino's automobile and avoid a head-on collision with the oncoming vehicle. The driver of the latter automobile came to a halt at the same time as Villarino. The latter alighted from his car and conversed with Imogene Beaver and informed her he was going to notify the sheriff. The alleged Andrews and Perez continued on their way and soon disappeared. Villarino and the strikers proceeded to Taft where Villarino reported the incident to the sheriff's department. As Villarino and the strikers drove back to Respondent's ranch, they noticed a deputy sheriff who had stopped along the side of the road to converse with one of the guards who had driven one of the Respondent's pickups during the pursuit of the union vehicles. Villarino and his companions continued on their way back to the Lakeview Ranch complex but stopped on Copus Road when they observed the conglomeration of vehicles parked at the scene of the incident which was the subject matter of Part XI of this decision.

Fred Andrews testified that he was not present at the ranch on the evening of August 2. He said that he was in Los Angeles for

a day of rest from the tension caused by the strike and that was confirmed by the testimony of David Otey and Frank Castro. John Perez was called to testify by Respondent's attorneys on other matters but was never directly questioned by them about the incident described herein. General Counsel and Respondent stipulated that if Perez were to testify about the incident of involving Pablo Altamirano's automobile (see Part XI) he would have testified the same as Frank Castro.

B. Analysis and Conclusion

Respondent contends that the incident during which Villarino's automobile was followed and forced to the side of the road never occurred. Respondent argues that the ALO has no reason to doubt the total denial by Respondent's witnesses of the occurrence of this motor vehicle incident involving David Villarino. The only defect with such an argument is that none of Respondent's witnesses ever directly denied the occurrence of this incident. It is true that Respondent presented proof that Fred Andrews could not have participated in the incident as he was in Los Angeles the night of the occurrence and perhaps neither could have John Perez because he was with Castro/ Otey, and Terrazas when he and those three chased and detained the Altamirano vehicle the same night.

However, Respondent failed to call either of the guards who allegedly drove two of Respondent's pickup trucks to give their version of the incident nor did he present any evidence to demonstrate that Fred Andrews' automobile, the blue Cadillac, was not used in the chase of Villarino and his companions. Thus, in the record there exists uncontroverted evidence of the incident from two

witnesses called by General Counsel, Villarino and Alvarez, which I find to be credible. Furthermore there is the uncontroverted stipulated testimony of an impartial third party, Imogene Beaver, which confirms the fact that the incident at least took place although she was not called upon to identify the participants as Respondent's supervisors and guards.

Consequently, I find that the incident actually occurred: four vehicles pursued Villarino and six strikers, as they rode in the two vehicles westerly along Basic School Road, and attempted to force Villarino's vehicle off the road. I also find that the drivers of the four vehicles involved in that attempt were agents of Respondent and therefore Respondent is responsible for the incident. Both David Villarino and Leodegardio Alvarez identified two of the four vehicles as Sam Andrews Sons' pickup trucks driven by Respondent's guards. Alvarez identified one of the other two vehicles that engaged in the chase as one belonging to Fred Andrews. There was no specific description of the vehicle that Villarino believed John Perez was driving.

Respondent failed to call the two guards to testify and made no claim that they were unavailable. Also an inference can be made that if the two guards had been called they would have substantiated the testimony of Villarino and Alvarez in respect to the incident. Moreover, Respondent never presented any evidence as to the whereabouts of Fred Andrews' automobile that night. An inference can be made that Fred Andrews' automobile was involved in the incident which led Villarino and Alvarez to believe it was driven by its owner, Fred Andrews.

John Perez could have very well participated in this incident and then later joined Castro, Otey and Terrazas in the pursuit and detention of the Altamirano automobile. Villarino and his companions continued on to Taft approximately seven miles away, spent some time there reporting the incident to the sheriff and then returned approximately 10 miles to where the Altamirano vehicle had been detained. This would have taken at least 40 minutes, ample time for Perez to have returned to the Santiago Ranch offices and joined Otey et al. Respondent called Perez to testify on other matters but failed to ask him any questions about this incident, so I infer that if he had been asked questions in reference thereto he would have confirmed Villarino's and Leodegardio's testimony.

Therefore, because of the forementioned reasons, I find that Respondent's agents were responsible for the incident in question here.

It can be argued that Villarino and his six companions were not engaged in protected activities and therefore there is no violation. Respondent points out that Alvarez testified that they were just cruising along Copus Road. However Villarino testified that they were driving along Copus Road to see whether there were any strikebreakers working at night. I credit Villarino's version since he, as the director of field operations for the UFW in the area, was the leader of the group and would have better knowledge of the purpose of the trip than Alvarez.

Respondent argues that Respondent had a legitimate business reason to detain "carloads of strikers who were cruising on roads immediately adjacent to Respondent's property at approximately

midnight, admittedly stopping and getting out of their vehicle next to a field containing Respondent's irrigation equipment."

However Respondent never presented any of Respondent's personnel as witnesses to testify that that was their purpose in following and trying to detain the two carloads of strikers. Villarino candidly testified that he had stopped along the road, a short time before the following began, and that he and some of his companions urinated at the side of the road. Neither he nor Alvarez ever admitted that they had entered Respondent's property and there is no evidence of such entry. There is credible uncontradicted evidence that Villarino and the strikers were not engaged in any illegal activity such as attempting to damage Respondent's personal property. It is clear from the record that they were engaged in protected union activities that evening manning the picket line at the Lakeview complex and patrolling Copus Road to find out whether any strikebreakers were working at night. I conclude therefore that Respondent has violated section 1153(a) of the Act by interfering with, coercing and restraining the strikers in the excercise of their right to engage in protected concerted activity and that Respondent's motive in so doing is irrelevant.

XV. The Allegation that Respondent Denied UFW Representatives Strike Access on August 6 and 1, 1981

A. Facts

During the strike, the striking employees concentrated their picketing activities at Respondent's Lakeview complex of buildings, which included the labor camp, and the Santiago Ranch complex, which included the headquarters office and equipment yard.

The strikers picketed the two locations between 5 a.m. and

3 p.m. daily. They attempted to converse with the nonstriking employees when the latter left the labor camp at Lakeview and the equipment yard at the Santiago Ranch headquarters for work in the fields in the morning and also when they returned to the same locations in the afternoon, but were unsuccessful. The nonstriking employees always rode in company vehicles, such as buses and pickup trucks, that traveled at such a high rate of speed that there was no opportunity to communicate any information to them. Some of the workers drove directly to and from the fields in their own vehicles but the strikers also had little success in talking to them since they always drove at such a velocity as to make conversation difficult if not impossible. What usually occurred when nonstrikers sped past the strikers in company or private vehicles was an exchange of vulgar epithets between the two sides.

At times pickets in automobiles followed the replacement workers and, if and when the latter came to a stop or parked, the strikers were able to converse with them. However there were times when the strikers were unable to follow the non-strikers because sheriff deputies prevented them from so doing.

On various occasions, strikers attempted to talk to the nonstriking employees at the edge of the fields, but on each such occasion the foremen ordered the employees to move into the fields and away from the public roads thus effectively terminating with any opportunities the strikers had to communicate with the replacement workers.

On one occasion when the UFW organizers and strikers were trying to speak with replacement workers, the foremen ordered the

workers to stop their work, the laying of pipes near the edge of a field, and to move further into the field. The employees complied and the foremen finished doing the employees' work at the edge of the field.

There were approximately 200 employees working at Respondent's ranches during the strike. About 100 of them lived at the labor camp at the Lakeview complex and the rest resided in Lament, Arvin and Bakersfield, all communities within 20 miles of Respondent's ranches. There was no clear evidence whether the union and/or the strikers had the addresses of all these workers or the exact number of visits strikers made to the homes of nonstriking employees. There was evidence that the strikers visited several of the replacement workers at their homes but the attempts to communicate with the nonstrikers at home proved to be unsuccessful.

The labor camp at Lakeview was located approximately 75 yards north of Copus Road; it was impossible for strikers to approach close enough to converse with the nonstriking employees residing at the camp without trespassing on Respondent's property. However, there was a park bordering the side of the labor camp and the strikers could, by entering the park which was adjacent to Copus Road and walking back into the park about 30 to 100 yards, approach the fence between the camp and the park and converse with the employee-residents of the camp.

On the first or second day of the strike, Maurilio Urias and a group of strikers went to the park for a meeting, concerning the strike. Once there, Fred Andrews, or perhaps Don Andrews, came with the police and informed them that they would have to leave the

park since it was private property {it actually belongs to Respondent) and if they stayed, Andrews would have them arrested. In response to this warning, the strikers left the park and decided not to utilize the park for the time being as a means to reach the labor camp and converse with the employees residing there.

Approximately 5 families of the striking workers resided in trailers on the northern edge of the park (the edge farthest from Copus Road). Keeping in mind the warning received from one of Respondent's owners about trespassing on the park property, the strikers decided to have one of the residents of the trailers hold a barbecue and invite some strikers to attend, so that the strikers would be present as invitees rather than as trespassers on Respondent's park property, and would thus be able to gain access to the park legally.

Approximately ten UFW organizers and strikers attended the barbecue on or about July 22 and afterwards walked over to the fence and conversed with one of the replacement workers who was resting on the grass just beyond the fence. Fred Andrews, who was then inside the fence, motioned to the replacement worker to enter the camp grounds and the worker complied. David Villarino, Maurilio Urias and Ramon Navarro, followed by three or four strikers, entered the camp enclosure and began to converse with some replacement workers. Immediately Fred Andrews, Dave Otey and four uniformed guards confronted them. Andrews ordered them to leave and when they failed to comply, he ordered the guards to expel them from the camp. The UFW organizers and strikers did not resist the guards' efforts to push then out but turned and walked out of the camp of their own

volition.

On or about August 1, the strike leaders came to the conclusion that the picketing efforts were ineffective since they could not engage in any dialogue with the nonstriking employees about the strike issues. Consequently they decided to picket at night and make sufficient noise and beam light from spotlights into the camp windows so that the labor camp residents would find it difficult to get a good night's sleep,[23/] and thus this aspect of their working conditions would become so intolerable they would quit. The strikers began the all-night picketing on Sunday, August 2. On that same day David Villarino, Maurilio Urias and Mario Vargas met at Ramon Navarro's trailer and walked over to the labor camp fence and conversed with 20 replacement employees for an hour and a half. They then departed.

Respondent retaliated by placing tarpaulins all around the labor camp fence so that the strikers' spotlights would not beam into the barracks windows. Concomitantly, the UFW organizers and strikers were no longer able to converse with camp residents through the fence bordering the park. Respondent also placed truck trailers draped with tarpaulin in the yard between the labor camp fences and the barracks because the strikers had removed some of the fence tarpaulins.

After two nights, the strike leaders decided to terminate the all-night picketing since they learned that Respondent was about

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23. In addition to the spotlights and noise makers (hitting trash can lids, automobile hoods, etc.), the strikers used a bullhorn to announce to camp residents the purpose of the strike and to shout disparaging epithets at them.

to obtain an injunction to prohibit such picketing and tactics. Since all their methods to communicate with the nonstriking workers had proved fruitless and the latest tactic of all-night picketing was about to be prevented, union agents decided they would attempt strike access during the noon hours.

On August 6, at 11:30 a.m., Danny Ybarra, a paralegal worker with the UFW, telephoned Merrill Storms, Respondent's attorney and informed him that the UFW representatives and strikers would take access at Respondent's ranch at 12 o'clock noon. Ybarra began to read a list of 26 to 28 persons who he stated would take access.[24/] Storms protested and told Ybarra that such access was illegal because it was untimely, the UFW had not demonstrated a need and Respondent was concerned with its responsibility to avoid confrontations between strikers and nonstrikers. Storms stated that the access takers would be treated as trespassers unless the UFW would negotiate with Respondent about the terms of access. Ybarra responded that the UFW had the same right to access during a strike as provided by the ALRB regulations for pre-election access, that is, an hour before work, an hour at lunch time, and an hour after work. Ybarra told Storms he did not know the locations where the UFW representative and strikers would attempt access. Storms sent a telegram to the UFW notifying the union that it had no right to strike access under the ALRB case O. P. Murphy and the appellate court decision in California Coastal Farms and therefore the

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24. The UFW had sent a telegram to Respondent on August 6 with a complete list of 28 UFW representatives and strikers who were going to take access.

attempted access would constitute trespass. Storms also mentioned in the telegram that the union had not complied with the terms of O. P. Murphy and that it had refused to negotiate with Respondent regarding access.

By approximately 11:40 a.m., about 150 UFW pickets had gathered on Copus Road in front of Respondent's field 101. TV cameramen and reporters were present at the site. Approximately 10 to 12 UFW representatives and striker left the large group of pickets and entered Respondent's property, some walking and some in motor vehicles. Respondent's supervisors and deputy sheriffs who had been summoned by Respondent went into action to detain the access takers.

Some of the access takers were detained before they were able to converse with the nonstriking employees and some were detained afterwards. The access takers talked to the nonstriking employees about the strike issues. There was no direct evidence presented of any violence or threats of violence. There was some hearsay evidence, that was admitted but not for the truth of the matter asserted, that one of the access takers, Jose Alfredo Navarro, had threatened two of the nonstriking employees. However Respondent failed to call as witnesses the complaining employees. Moreover Navarro denied ever making those threats. Rava, one of the foremen, testified that one of the access takers, driving an automobile almost struck him as he stepped in front of it to wave him to a stop. Rava claimed that if he hadn't jumped out of the way in time, the vehicle would have struck him.

After Respondent's supervisors and deputy sheriffs detained

the access takers, some of the latter walked out of the fields of their own volition and others refused and were arrested by the deputy sheriffs, who thereupon transported them out of the fields to the public road and released them.

The next morning approximately 150 pickets arrived at the Santiago Ranch complex and began to picket in front of the entrance. At approximately 6 a.m. 10 to 12 UFW representatives and strikers left the main group of pickets and marched into Respondent's premises and toward the entrance gate to the equipment yard. One of the gate doors was open and the other closed. Four of the Respondent's uniformed guards arrived and took up positions between the advance group of pickets and the gate. These pickets began to push against the line of guards and, little by little, the guards began to cede space, as the pickets surged forward. Neither the pickets nor the guards (who were armed with sidearms and a rifle) used any force other than the forward momentum of their bodies. The advance group of pickets did not shout epithets at the non-strikers inside the yard but only that they wanted to talk to them. At that moment, about 30 nonstriking employees arrived inside the yard and alighted from the company bus and began to shout to let the pickets in as they could handle them in a fight. Merrill Storms, Respondent's attorney, who had been present in the yard and observing the events at close range, shouted to Rava, one of the foremen, to close the one gate door remaining open so as to avoid a physical confrontation between the pickets, who had just reached the gate, and the nonstrikers, who had just descended from the bus. Rava complied immediately and thus the forward surge of the pickets

was halted as they pressed against the guards who were now with their backs up against the closed gate entrance to the yard.

Chris Schneider, a UFW representative who was with the group of advance pickets, shouted that the UFW was entitled to morning, noon and night strike access and Merrill Storms, shouted back that the UFW did not have this right.

Respondent's supervisors ordered the nonstriking employees to reboard the buses and proceed to their job assignments in the fields which they did immediately. At the same time the advance group of pickets turned around and rejoined the main group on Copus Road and resumed picketing there.

At 10 o'clock the same morning Merrill Storms sent another telegram to the UP/[1]? advising them that Respondent's position continued to be that the union had no right to strike access but that Respondent still stood ready to negotiate a strike-access agreement.

At 11:30 a.m., Danny Ybarra telephoned Respondent's office, spoke to Merrill Storms, and provided him with the names of the persons who would be taking access that same day at noontime.

Once again, approximately 10 to 12 UFW representatives and strikers attempted to take access. Some were able to talk to the nonstriking employees before being detained by the deputy sheriffs and Respondent's supervisors, but others were unable to do so. The access-takers talked to the nonstriking employees about the strike issued. Some of the access takers left of their own volition after being detained and others were arrested by the deputy sheriffs and escorted by the deputies off the property and then released. There

was no evidence presented at the hearing of any threats or acts of violence between the access takers and the deputy sheriffs, supervisors or nonstriking workers.

B. Analysis and Conclusion

In Bruce Church Inc. 7 ALRB No. 20 the Board determined, and in Growers Exchange, Inc. 8 ALRB No. 7 it confirmed, that a union has the right to strike access when there is no other effective means of communication with non-striking employees either on the picket line or by alternative means such as home visits, radio broadcasts, etc.[25/]

By effective means the Board meant "expanded opportunities to communicate its strike message on a personal basis to nonstrikers." The Board considers that a strike access that will permit such a communication will promote rationality between the parties and help to reduce frustration and tensions which arise when picketing is inadequate.

The Board stated that a picket line in the agricultural setting, in general, fails to provide effective means for the union to communicate the strike issues to the nonstrikers and held that in the particular circumstances of the Bruce Church case there were no adequate alternative means available to the UFW for this same kind of communication. However, the Board mentioned that there could be situations where picket-line communications would be effective or where there are other adequate means for a union to explain the

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25. In Bruce Church, supra, the Board said, "In those situations where picketing is not an effective means of communication and no other effective means exist, we will grant strike access."

reasons for the strike to the nonstrikers.

Therefore it appears that a union would be entitled to strike access during a particular strike unless the employer can prove that adequate means existed by which the union could communicate its message to the nonstrikers, either in the vicinity of the picket line or otherwise, e.g., through radio broadcasts, home visits, etc.

It is clear from the record in this case that the UFW was unable to adequately communicate with the nonstriking employees either on the picket line or through any alternative means.

The picket line situation in this particular case, which permitted only sufficient time for the strikers to shout three or four words at the nonstriking employees sitting in the company buses, or private automobiles, as they sped by out of the labor camp and equipment yard and later into the fields, falls far short of the Board's standards for adequate means by which the union may communicate its message to the nonstriking employees. Perhaps the strikers would have had adequate means for this face-to-face dialogue which would satisfy the Board's requirements when the nonstriking employees were working near the edge of the fields or when they stopped to converse with the strikers en route in their private automobiles to and from the fields. However, in the instances when such communications could have occurred, Respondent effectively thwarted the strikers' attempts. On the occasions when the nonstrikers were working near the edge of the fields and the strikers tried to converse with them, Respondent's supervisors required the nonstrikers to move away further into the field. There

were times when the strikers were able to follow the nonstrikers and converse with them but this alternative was also thwarted by sheriff's deputies preventing the strikers from following in their vehicles the vehicles of nonstriking employees. There was also the incident which was the subject of an allegation herein (see Part X) when Respondent's personnel manager interfered with such a conversation and one of Respondent's owners effectively ended the conversation. I find that the alternative of following nonstriking employees at the job site and attempting to converse with them in such situations does not satisfy the Board requirement of communication that would permit the union to freely transmit its message on a personal basis to nonstrikers.

Moreover, in the instant case, there was no adequate alternative means for the union to elsewhere or otherwise communicate its reasons for the strike to nonstriking employees. Respondent argues that such alternative means existed in that the strikers could enter the park that was adjacent to the Lakeview labor camp and converse through the fence with the employee residents while they were in the labor camp yard. However the first time the strikers entered the park after the strike started, on July 9 or 10, one of Respondent's owners informed them that the park was private property and threatened them he would have them arrested that if they did not leave the park. Because of that, the strikers left the park and decided not to utilize it as a means of conversing with the nonstriking employees residing there. On or about July 22, approximately 10 of the strikers returned to the park under the guise of invitees of the trailer residents and conversed with

employee-residents of the labor camp for a few minutes. They attempted to enter the camp but were expelled by one of the Respondent's owners and security guards. Approximately one week later, Respondent placed tarpaulins completely around the labor camp fences and consequently even if strikers had entered the park under the guise of trailer camp residents' invitees they would have beer, unable to communicate through the fences to nonstriking employees in the labor camp yard. So at the time the strikers attempted strike access to Respondent's fields, on August 6 and 7, there was no way for them to communicate with the nonstriking employee-residents while they were at the labor camp.[26/]

The UFW attempted to use bullhorns to communicate with the nonstriking employee-residents at the camp on the three nights they engaged in all-night picketing of the camp. First of all, the Board has already determined that bull horns do not constitute an adequate means for the union to communicate its strike message to nonstriking employees.[27/] Secondly, it was only after the union had unavailingly attempted all means at its disposal to communicate with the nonstriking employees on a friendly basis that it resorted to the night-time picketing as a means of inducing the nonstriking

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26. Respondent points out that 5 strikers resided in trailers just to the rear of the park and they, as non-trespassers, could have spoken through the fence to the labor camp residents during the month of July but refrained from doing so. Respondent, therefore, argues that the UFW had an alternative method to adequately communicate with nonstrikers but chose, of its own accord, not to utilize it. I find that the fact that five strikers theoretically had access to speak to nonstrikers is not equivalent to the amount and degree of access the Board has found adequate and necessary in strike situations.

27. Bruce Church, supra.

employees to abandon their jobs. This tactic of night-time picketing was apparently calculated to harass the nonstrikers so much that they would be unable to sleep, and the bullhorn was used in conjunction with noisemakers, spotlights, etc. So Respondent cannot cite such use of the bullhorn to try to argue that when the union did have a means, the bullhorn, at its disposal to communicate with the workers it used it not for communicating its strike message but to verbally abuse the employees. It is evident that if the strikers had been granted strike access during the month of July and had been able to communicate its message to the non-striking employees it would not have had to resort to the all night picketing the early days of August.

The union herein did not have any adequate means of communicating its message to the replacement workers, e.g. distribution of leaflets would not be feasible due to the rapid speed of the motor vehicles transporting nonstriking employees to and from the fields. Under such circumstances it would be virtually impossible for the strikers to distribute leaflets to the nonstriking employees.

Respondent contends that General Counsel has failed to prove that the UFW made attempts to contact the nonstrikers who resided in Lament, Arvin and Bakersfield.[28/] It implies therefore that without the proof of those attempts and the futility thereof General Counsel has failed to prove lack of adequate alternative means of communication and therefore the UFW is not entitled to

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28. Respondent points out that a large percentage, possibly the majority of the nonstrikers, resided in these nearby communities.

strike access. However a careful reading of the Bruce Church case indicates that the burden is on the employer to prove that there existed means for the union to adequately communicate its message to the nonstrikers.

In the instant case Respondent has failed to meet this burden. There is no clear evidence that the UFW had access to the addresses of all the nonstriking employees. There is some evidence that strikers visited several nonstrikers in their homes in those communities but there was no proof of any conversations taking place. I find that the paucity of evidence in respect to these alleged alternate means falls far short of proof that the UFW possessed adequate alternative means of communication that would meet the requisites set forth by the Board in the Bruce Church case.

Furthermore only about fifty percent of the nonstrikers resided in outside communities, while the other fifty percent resided in the labor camp. Since the Respondent denied the union access to the employees who resided at the camp, by thwarting the UFW representatives' attempts to enter the Lakeview camp, it is obvious that Respondent's alleged alternative means of communication, the home visits, did not exist for at least fifty percent of the nonstriking employees. This fact by itself would rule out finding that home visits constituted an adequate alternative to strike access at the job site.

For the reasons stated above, I find that the UFW had no adequate alternative means of communication with nonstrikers at the time its representatives attempted to take strike access at Respondent's premises on August 6 and 7, 1981.

Respondent argues that due to the UFW strikers' hostility, toward nonstrikers as manifested by the acts of violence against the nonstriking employees, the union forfeited any right to access. However the Board in Bruce Church, supra, stated that violence by a union has no bearing on its right to access as long as it was not connected with the actual access-taking. In the instant case, there was no evidence of any violence by either the union access-takers, Respondent's supervisorial personnel or guards, or the nonstriking employees during the actual access-taking. Some hearsay testimony, which was admitted, but not for the truth of the matter asserted, indicated that one of the access-takers had threatened some non-striking employees, and other testimony indicated that one of the access-takers had driven an automobile which almost struck a foreman who was trying to signal the driver to stop. However, neither the hearsay testimony nor the uncorroborated evidence of one isolated incident can be used as a basis for denying agricultural employees their right to be informed about the issues of a strike so they can make intelligent choices and decisions about whether to support or participate therein.

Respondent further argues that the UFW organizers and strikers had a hostile attitude toward the "strikebreakers" and that such an attitude "raises serious doubts that it (the UFW) only wished to take access to discuss matters with the nonstriking employees". Respondent submits that it acted reasonably in assuming, based on the UFW strikers' violent and hostile acts and statements, that the sole purpose of the strikers and organizers in seeking access Respondent's fields was to coerce, intimidate and

threaten the nonstriking employees into supporting the strike.

To support its assertion of the UFW's hostile attitude, Respondent points out that the strikers inflicted physical beatings on nonstriking employees, threatened nonstriker's wives and children, ran nonstrikers' vehicles off the road, engaged in highspeed chases of nonstrikers[1] vehicles, threw rocks, dirt clods, and culls at nonstrikers, and insulted nonstrikers with vulgar epithets.

The principal defect of the argument is that the only evidence in the record concerning this alleged violent conduct is hearsay (which was admitted but not for the truth of the matter asserted) except for the last two items which are common occurrences on all picket lines, where, as here, both strikers and nonstrikers frequently trade insults and vulgar epithets.

Furthermore, the UFW organizers and strikers did not give any indication whatsoever, either in their request for access or their actual taking thereof, that they had any other purpose but to converse in a peaceful manner with the nonstriking employees. Even on the morning of August 7, when the advanced group of pickets approached the gate to the equipment yard, they merely shouted their request to talk to the nonstrikers and refrained from any name-calling.

Moreover, in Grower's Exchange, supra, the Board stated it has the power to deny access where an atmosphere of coercion has resulted from repeated and aggravated violent acts. There is a paucity of evidence in the instant case about any acts of violence by strikers toward nonstrikers and so there was no basis for Respondent to deny the UFW's requests for strike access based on

this premise, and I so find.

Respondent also argues that the UFW failed to give it proper notice of its intent to take access, as it asserts the telephone calls twenty to thirty minutes before the attempted access taking on August 6 and 7 were entirely inadequate. In its Bruce Church decision, the Board in effect declared that it is unnecessary for a union to follow O. P. Murphy guidelines for post-certification access when making its request for strike access. In Bruce Church, the Respondent's principal factual contention was based on whether the union met O. P. Murphy guidelines in requesting strike access, and the Board stated that, as it did not base its findings of an unfair labor practice on O. P. Murphy grounds, it did not need to resolve any of the factual questions posed by the Respondent, The O. P. Murphy guidelines require a union to give proper notice to the employer, to provide information as to the number and names of representatives who wish to take access, etc. It is clear from the Board's decision that a union is required to meet O. P. Murphy standards only when requesting post-certification access to consult with employees about the collective bargaining negotiations but not in requesting access to nonstriking employees during the course of a strike.

Respondent also argues that at the time of the UFW s request for strike access in the instant case there was no regulation, statute or Board or court decision that had established a union right to strike access or an employer's obligation to grant it. In the Bruce Church case, the same situation existed in regard to the status of the law when strike access was requested and the

Board nevertheless found a violation. So this defense is unavailable.

Based on the foregoing, I conclude that Respondent here denied the UFW an opportunity on August 6 and 7, 1981, to take access to the jobsite for the purpose of communicating its strike message to the nonstriking employees. The UFW, under the facts of this case, had no adequate alternate means of communication with the nonstrikers. I therefore conclude that Respondent has interfered with, coerced and restrained employees in the exercise of rights guaranteed them in Labor Code section 1152 and thereby violated section 1153(a) of the Act.

ORDER

By authority of Labor Code section 1150.3, the Agricultural Labor Relations Board hereby orders that Respondent Sam Andrews Sons', its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Failing or refusing to hire or rehire, or otherwise discriminating against, any agricultural employee in regard to hire or tenure of employment or any term or condition of employment because he or she has engaged in any union activity or other protected activity or has filed charges or given testimony in any Board proceedings.

(b) Denying reasonable access to Respondent's premises to any UFW representative or other union agent for the purpose of communicating with nonstriking employees while there is a strike in progress at Respondent's premises.

(c) In any like or related manner interfering with,

coercing or restraining any union agents or striking employees in their lawful contact and communications with nonstriking employees during a strike.

(d) Following motor vehicles carrying UFW representatives and/or strikers or otherwise interfering with, coercing or restraining such persons, to prevent them from engaging in lawful union activity or other protected concerted activity.

(e) In any like or related manner interfering with, restraining and coercing employees in the exercise of their rights to self-organization to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Offer Francisco Larios employment as an irrigator when the first opening occurs in that position following the issuance of this Order, and reimburse him for all losses of pay and other economic losses he has suffered as a result of Respondent's discriminatory refusal to rehire him on and after January 1, 1981, the award to be computed according to the formula stated in J. L. Farms, 6 ALRB No. 43, plus interest thereon at a rate of seven percent per annum.

(b) During any period when there is a strike in progress at Respondent's premises, permit access to its premises by representatives of the striking union for the purpose of

communicating with nonstriking employees. Said access takers may enter the Respondent's property for a period not to exceed one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat their lunch. If there is an established lunch break, the access period shall encompass such lunch break. If there is no established lunch break, the access period shall encompass the time when the employees to be contacted are actually taking their lunch break, whenever that occurs during the day. Access shall be limited to one UFW representative or union agent for every fifteen workers on the property. Said access shall continue until a voluntary agreement on strike access is reached by the union and the employer or until the union ceases to be the collective bargaining representative of Respondent's employees, whichever occurs first.

(c) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into appropriate languages, reproduce sufficient copies in each language for the purposes set forth hereinafter.

(d) Post copies of the attached Notice, in all appropriate languages, for 60 consecutive days in conspicuous places on its property, the period and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered, or removed.

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all employees employed by Respondent at any time

during the period from January 1, 1981, until October 31, 1981.

(f) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its agricultural employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or employees' rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(g) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply therewith, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

DATED: April 26, 1982

Arie Schoorl

ARIE SCHOORL
Administrative Law Officer

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board issued a complaint that alleged that we had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law during the 1981 strike by refusing to allow UFW organizers and other union agents to take access to our property during a strike in order to speak to nonstriking employees; by interfering with lawful conversations between UFW representatives and nonstriking employees; by intimidating UFW representatives and strikers by following their vehicles and attempting to force them off the road; and by refusing to hire a former employee Francisco Larios because he had engaged in union activities and had sought help from the Board. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do. We also want to tell you that:

The Agricultural Labor Relations Act is a law that gives you and all farm workers these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want 2 union to represent you;
4. To bargain with your employer to obtain a contract covering your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help or protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

Especially:

WE WILL NOT refuse to allow agents of your certified bargaiing representative to enter our property at reasonable times during a strike at our property so that they can talk to the employees who are working.

WE WILL cease intimidating UFW representatives and strikers by following their vehicles and trying to force them off the road.

WE WILL cease interfering in lawful conversation between UFW representatives and nonstriking employees while on or off our premises.

WE WILL hire Francisco Larios as an irrigator and reimburse him for all losses of payment and other economic losses.

Dated:

SAM ANDREWS SONS'

By: _____

Representative Title

If you have any questions about your rights as farm workers or this Notice, you nay contact any office of the Agricultural Labor Relations Board. One office is located at 627 Main Street, Delano, California 93215. The telephone number is (805) 725-5770. This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE